CITY OF LAKELAND TENNESSEE

Board of Commissioners
Regular Meeting Agenda
Thursday, July 18, 2024, 5:30 PM
City Hall, Lakeland, Tennessee 38002

I. CALL TO ORDER BY MAYOR:

II. INVOCATION:

III. PLEDGE:

IV. ROLL CALL BY RECORDER:

V. PUBLIC HEARING:

VI. TREASURER'S REPORT:

VII. REPORTS FROM COMMITTEES, MEMBERS OF THE BOARD OF COMMISSIONERS & OTHER OFFICERS:

- Sheriff's Report
  a. June Lakeland Crime Report
- City Manager's Report
  a. July 2024 City Manager's Report
- Commissioners' Report
  a. Board of Education - *Commissioner Wright*
  b. Municipal Planning/Design Review Commission - *Commissioner Atkinson*
  c. Parks and Recreation Board - *Vice Mayor Dial*
  d. Industrial Development Board - *Mayor Roman*

VIII. PUBLIC COMMENTS:

IX. SEWERAGE COMMISSION BUSINESS:

X. CONSENT AGENDA:

XI. REGULAR AGENDA:

1. **Approval of previous meeting minutes** - June 18, 2024

2. **Ordinance - First Reading** - amending certain portions of title 14 (zoning and land use control) chapter 14 (signs) of the City of Lakeland's Municipal Code pertaining to section 14-405. *Sponsored by Mayor Roman*

3. **Ordinance - First Reading** - amending the fiscal year 2024 annual budget, passed by ordinance O-10-2023, as amended by ordinances O-3-2024 and O-6-2024.

4. **Resolution** - approving reappointment to the Community Advisory Board.

5. **Resolution** - approving a contract with Smith Seckman Reid, Inc. for the replacement of Lift Station #24 for Lakeland Hills Dr.

6. **Resolution** - approving a contract with Geotechnology, LLC dba UES for geotechnical exploration services for the Oliver Creek Interceptor project.

7. **Resolution** - approving Change Order #1 with Barge Design Solutions for the Fiscal Year 2024 Lakeland Athletic Complex Phase II design and engineering.

8. **Resolution** - approving an agreement with the Tennessee Department of Transportation for Seed Tick Road Roundabout.

9. **Resolution** - authorizing the submittal of an application to the Tennessee Department of Transportation for the 2024 Statewide Partnership Program.

10. **Resolution** - approving Amendment #1 of the Solid Waste Collection and Disposal Contract with Waste Connections of Tennessee, Inc.

11. **Resolution** - authorizing the City Manager to execute an agreement with Central Technologies, Inc. for Microsoft 365 licensing renewal.

12. **Resolution** - authorizing the City Manager to execute a multi-year agreement with Trimble for Cityworks license renewal.

13. **Resolution** - authorizing the City Manager to execute an agreement with True North Geographic Technologies, LLC for Cityworks and GIS hosting services.

14. **<u>Resolution</u>** - authorizing the City Manager to execute a professional services engagement letter with Bass, Berry & Sims PLC for general legal advice and/or representation pertaining to matters of public finance and economic development.

15. **<u>Resolution</u>** - authorizing the City Manager to execute a professional services engagement letter with Bass, Berry & Sims PLC for the issuance of general obligation bonds to the United States Department of Agriculture.

16. **<u>Resolution</u>** - authorizing expense reimbursements for the Board of Commissioners.

17. **<u>Resolution</u>** - authorizing payment to the Lakeland School System for a portion of the cost of a temporary traffic signal at Highway 70 and Seed Tick Road. *Sponsored by Commissioner Wright*

18. **<u>Discussion and Possible Action</u>** - regarding possible regulations requiring supplemental vegetation after the completion of construction and/or Memphis Light Gas and Water (MLGW) project. *Sponsored by Commissioner Wright*

XII. ANNOUNCEMENTS:

XIII. ADJOURNMENT:

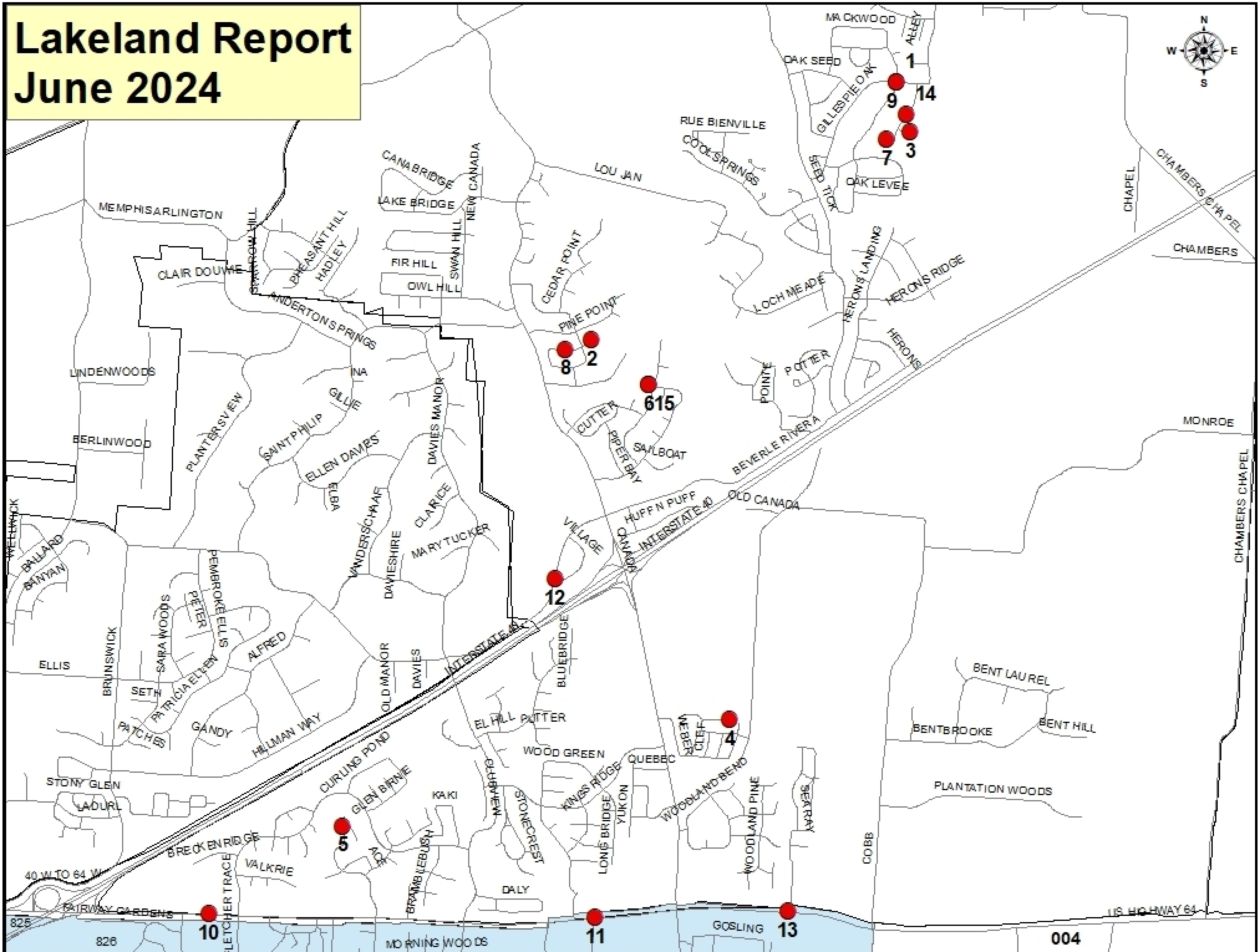
Shelby County Sheriff's Office

Crime Report

Lakeland

June 2024

Lakeland Report
June 2024



Incident Table

ID #	CASE_NUMBER	DEPT. CODE	METHOD OF ENTRY	DATE OF INCIDENT
1	2406000423SH	Aggravated Assault		6/7/2024
2	2406000521SH	Burglary/Residential	PRIED REAR DOOR	6/12/2024
3	2406000520SH	Burglary/Residential	THROUGH UNLOCKED DOOR FRONT DOOR	6/12/2024
4	2406001037SH	MVT/Passenger Vehicle	BROKE	6/23/2024
5	2406000235SH	MVT/Passenger Vehicle		6/5/2024
6	2406001307SH	MVT/Passenger Vehicle	SIDE WINDOW	6/29/2024
7	2406000538SH	Other Theft/Non-Specific		6/12/2024
8	2406001257SH	Other Theft/Non-Specific		6/28/2024
9	2406000423SH	Robbery/Individual		6/7/2024
10	2406000881SH	Shoplifting/Misdemeanor	THROUGH UNLOCKED DOOR FRONT DOOR	6/20/2024
11	2406000168SH	Shoplifting/Misdemeanor	LAWFUL FRONT DOOR	6/4/2024
12	2406000256SH	Theft from Building	THROUGH UNLOCKED DOOR FRONT DOOR	6/5/2024
13	2406001124SH	Theft from Motor Vehicle	THROUGH UNLOCKED DOOR FRONT DOOR	6/25/2024
14	2406000448SH	Vandalism/Misdemeanor		6/10/2024
15	2406000036SH	Vandalism/Misdemeanor		6/1/2024

All Incident Count

Incident	Count
Aggravated Assault	1
Burglary/Non-residential	1
Burglary/Residential	2
False Pretenses/Swindle/Confidence Game	2
MVT/Passenger Vehicle	3
Other Theft/Non-Specific	2
Robbery/Individual	1
Shoplifting/Misdemeanor	2
Simple Assault	1
Theft from Building	1
Theft from Motor Vehicle	1
Vandalism/Misdemeanor	2
Grand Total	19

Tracked Count

Tracked Crimes	Jun-24	May-24	Jun-23
Agg Assualt	1	0	2
Burg Bus	0	0	0
Burg Const	0	0	0
Burg Res	2	1	1
MVT	3	3	2
Other Lar	4	2	5
Robb Ind	1	0	2
Theft Fm Bldg	1	0	1
Theft fm Mot Veh	1	7	1
Vandalism	2	3	4
Totals	15	16	18

END OF PRESENTATION

Board of Commissioners
Regular Meeting Minutes
Tuesday, June 18, 2024, 5:30 PM
City Hall, Lakeland, Tennessee 38002

I. CALL TO ORDER BY MAYOR:
The meeting was called to order by Mayor Josh Roman 5:30 p.m. on Tuesday, June 18, 2024.

II. INVOCATION:
The invocation was offered by Mayor Roman.

III. PLEDGE:
The Pledge to the Flag was led by Mayor Roman.

IV. ROLL CALL BY RECORDER:

Commissioner Jim Atkinson	Present
Vice-Mayor Michele Dial	Present
Commissioner Connie McCarter	Present
Mayor Josh Roman	Present
Commissioner Wesley Wright	Present

Staff personnel in attendance were City Manager Michael Walker, City Attorney Will Patterson, and City Recorder Cheyenne Carter.

V. PUBLIC HEARING:

1. **Ordinance - Second and Final Reading** - adopting the annual budget and tax rate for the fiscal year beginning July 1, 2024 and ending June 30, 2025.

   For the record: no public comments were heard.

2. **Ordinance - Second and Final Reading** - amending the fiscal year 2024 annual budget passed by Ordinance O-10-2023, as amended by Ordinance O-3-2024.

   For the record: no public comments were heard.

VI. TREASURER'S REPORT:
No treasurer's report was presented at this meeting.

VII. REPORTS FROM COMMITTEES, MEMBERS OF THE BOARD OF COMMISSIONERS & OTHER OFFICERS:

Sheriff's Report

a. May Lakeland Crime Report

This report was offered by Lieutenant Less.

City Manager's Report

a. June 2024 City Manager's Report

This report was offered by City Manager Michael Walker.

Commissioners' Report

a. Industrial Development Board - *Mayor Roman*

This report was offered by IDB President Michael Walker.

b. Board of Education - *Vice Mayor Wright*

This report was offered by Vice Mayor Wright.

c. Municipal Planning/Design Review Commission - *Commissioner Atkinson*

No report was offered at this time due to lack of quorum at previous meeting.

VIII. PUBLIC COMMENTS:
None.

IX. SEWERAGE COMMISSION BUSINESS:
None.

X. CONSENT AGENDA:
None.

XI. REGULAR AGENDA:

1. **Approval of previous meeting minutes** - May 16, 2024

Mayor Roman moved to bring this item to the floor, seconded by Commissioner Wright.

Discussion ensued.

When the question was called the minutes passed as presented, roll call vote, 5 in favor 0 against 0 abstain (5-0-0).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Mayor Roman, Commissioner Wright

Nay: None

Abstain: None

2. **Ordinance - Second and Final Reading** - adopting the annual budget and tax rate for the fiscal year beginning July 1, 2024 and ending June 30, 2025.

Vice-Mayor Wright moved to bring this item to the floor, seconded by Commissioner Atkinson.

City Manager Michael Walker presented this item.

Discussion ensued.

When the question was called the ordinance passed as presented, roll call vote, 4 in favor 1 against 0 abstain (4-1-0).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Mayor Roman, Commissioner Wright

Nay: Commissioner McCarter

Abstain: None

3. **Ordinance - Second and Final Reading** - amending the fiscal year 2024 annual budget passed by Ordinance O-10-2023, as amended by Ordinance O-3-2024.

Vice-Mayor Wright moved to bring this item to the floor, seconded by Commissioner Dial.

City Manager Michael Walker presented this item.

Discussion ensued.

When the question was called the ordinance passed as presented, roll call vote, 5 in favor 0 against 0 abstain (5-0-0).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Mayor Roman, Commissioner Wright

Nay: None

Abstain: None

4. **Resolution** - authorizing the purchase of a motor and impeller for Pump Stations #22 and #23 from Van Brocklin and Associates.

   Vice-Mayor Wright moved to bring this item to the floor, seconded by Commissioner Dial.

   Staff Engineer Paul Posey presented this item.

   Discussion ensued.

   When the question was called the resolution passed as presented, voice vote, 5 in favor 0 against 0 abstain (5-0-0).

5. **Resolution** - authorizing the purchase of a booster pump for the sludge press at the Scotts Creek Wastewater Treatment Plant from Tencarva Machinery Company.

   Vice-Mayor Wright moved to bring this item to the floor, seconded by Commissioner Dial

   Staff Engineer Paul Posey presented this item.

   Discussion ensued.

   When the question was called the resolution passed as presented, voice vote, 5 in favor 0 against 0 abstain (5-0-0).

6. **Resolution** - authorizing the issuance and payment of interfund bond anticipation notes in an amount not to exceed $20,000,000.

   Vice-Mayor Wright moved to bring this item to the floor, seconded by Commissioner Dial.

   City Manager Michael Walker presented this item.

   Discussion ensued.

   When the question was called the resolution passed as presented, roll call vote, 5 in favor 0 against 0 abstain (5-0-0).

   Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Mayor Roman, Commissioner Wright

   Nay: None

   Abstain: None

7. **Resolution** - authorizing the City Manager and/or City Attorney to obtain the necessary easements for the construction of the Oliver Creek Interceptor by negotiation and authorizing City Attorney to file and pursue condemnation proceedings concerning the necessary easement on Tract 2 owned by Lakeland Apartments TN Associates, LLC.

   Vice-Mayor Wright moved to bring this item to the floor, seconded by Commissioner Dial.

   City Attorney Will Patterson presented this item.

   Discussion ensued.

   When the question was called the resolution passed as presented, roll call vote, 5 in favor 0 against 0 abstain (5-0-0).

   Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Mayor Roman, Commissioner Wright

   Nay: None

   Abstain: None

8. **Resolution** - authorizing the City Manager to enter into an agreement with Tennessee Soccer Academy for a youth recreation soccer program.

   Commissioner Dial moved to bring this item to the floor, seconded by Vice-Mayor Wright.

   Recreation Manager John Proctor presented this item.

   Discussion ensued.

   When the question was called the resolution passed as presented, roll call vote, 5 in favor 0 against 0 abstain (5-0-0).

   Yea: Commissioner Atkinson, Vice-Mayor Dial, Commissioner McCarter, Mayor Roman, Commissioner Wright

   Nay: None

   Abstain: None

9. **Resolution** - authorizing the submission of an application for the BlueCross Healthy Place grant through the BlueCross BlueShield of Tennessee Foundation. *Sponsored by Commissioner Dial*

   Commissioner Dial moved to bring this item to the floor, seconded by Vice-Mayor Dial.

   Parks and Recreation Director Andrew Fisher presented this item.

Discussion ensued.

When the question was called the resolution passed as presented, roll call vote, 4 in favor 0 against 1 abstain (4-0-1).

Yea: Commissioner Atkinson, Vice-Mayor Dial, Mayor Roman, Commissioner Wright

Nay: None

Abstain: Commissioner Connie McCarter

10. **<u>Resolution</u>** - authorizing the Mayor to sign a proclamation designating July 2024 as Parks and Recreation Month in the City of Lakeland, Tennessee. *Sponsored by Commissioner Dial*
Commissioner Dial moved to bring this item to the floor, seconded by Vice-Mayor Wright.

Parks and Recreation Director Andrew Fisher presented this item.

Discussion ensued.

When the question was called the resolution passed as presented, voice vote, 5 in favor 0 against 0 abstain (5-0-0).

12. **<u>Discussion and Possible Action</u>** - regarding the City Attorney's May 2, 2024 report to the Board of Commissioners.

For the record: Mayor Roman motioned to move this item on the agenda to be presented before agenda item number 11, no objections were heard.

Mayor Roman moved to bring this item to the floor, seconded by Commissioner Dial.

Discussion ensued.

For the record: Commissioner Atkinson motioned to re-vote for the title of Vice Mayor and to repeal the current title of Vice Mayor from Vice Mayor Wright, seconded by Mayor Roman.

When the question was called the motion to re-vote for the title of Vice Mayor and to repeal the title of Vice Mayor from Vice Mayor Wright passed, roll call vote, 2 in favor 0 against 2 abstain (2-0-2).

Yea: Commissioner Atkinson, Commissioner Dial

Nay:

Abstain: Commissioner McCarter, Mayor Roman

For the record: Mayor Roman nominated Commissioner Dial to serve as Vice Mayor, no objections were heard. Mayor Roman closed nominations; no objections were heard.

When the question was called the nomination for Commissioner Dial to serve as Vice Mayor passed, roll call vote, 3 in favor 0 against 2 abstain (3-0-2).

Yea: Commissioner Atkinson, Mayor Roman, Commissioner Wright

Nay:

Abstain: Commissioner McCarter, Commissioner Dial

For the record: The remainder of the minutes will address the following title changes: Commissioner Wright and Vice Mayor Dial.

11. **Resolution** - requesting and authorizing a thorough investigation by the Tennessee Bureau of Investigation and the Shelby County Attorney General of the contract between the Lakeland Arts Council and the Memphis Symphony Orchestra that was signed by Vice Mayor Wesley Wright/the Lakeland Arts Council and Peter Abell, President and CEO of the Memphis Symphony Orchestra on March 5, 2024 prior to the authorization and approval by the Lakeland Board of Commissioners. *Sponsored by Commissioner McCarter*

    Commissioner McCarter moved to bring this item to the floor, seconded by Commissioner Atkinson.

    Commissioner McCarter presented this item.

    Discussion ensued.

    When the question was called the resolution failed, roll call vote, 1 in favor 4 against (1-4).

    Yea: Commissioner McCarter

    Nay: Mayor Roman, Vice-Mayor Wright, Vice-Mayor Dial, Commissioner Atkinson

XII. ANNOUNCEMENTS:

1. Vice Mayor Dial announced the attendance of Senator Brent Taylor at the next regularly scheduled Community Advisory Board meeting on August the 13th.

XIII. ADJOURNMENT:

There being no other business on which to act, the meeting was adjourned without objection at 6:55 p.m. on Tuesday, June 16, 2024.

These minutes were approved on July 18, 2024.

____

Josh Roman
Mayor

ATTEST:

____

Cheyenne Carter
City Recorder

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Ordinance - First Reading** - amending certain portions of title 14 (zoning and land use control) chapter 14 (signs) of the City of Lakeland’s Municipal Code pertaining to section 14-405. *Sponsored by Mayor Roman*

Staff Contact: Michael Walker, City Manager

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve ordinance O-7-2024.

BUDGET IMPACT

There is no budgetary impact related to this ordinance.

DISCUSSION

This ordinance removes language from the City of Lakeland's municipal code related to content-based regulation of signs.

ORDINANCE O-7-2024

AMENDING CERTAIN PORTION OF TITLE 14 (ZONING AND LAND USE CONTROL) CHAPTER 14 (SIGNS) OF THE CITY OF LAKELAND'S MUNICIPAL CODE PERTAINING TO SECTION 14-405

WHEREAS, the City of Lakeland's current sign ordinance contains content-based regulations pertaining to signs; and,

WHEREAS, the Board of Commissioners desires to remove content-based regulations; and,

WHEREAS, in accordance with Tennessee Code Annotated, Section 13-7-203 the legislative body held a public hearing to obtain citizen input on said amendments; and,

WHEREAS, said public hearing notice was published in a newspaper of general circulation at least 15 days prior to the aforementioned public hearing:

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Lakeland, Tennessee, as follows**:**

SECTION 1. The City of Lakeland municipal code section 14-405, Prohibited Signs and Devices, is hereby amended to remove the following words and/or phrases (the current municipal code section showing such in context is included as Exhibit A):

(1) Content
(3) Signs which show pictures of human figures, animals or food, and signs which contain characters, cartoons or statements of an obscene, indecent or immoral character which would offend public morals or decency;
(4) Content
(23) Inflatable signs
(40) Any sign that exhibits statements, words or pictures of an obscene nature.

SECTION 3. All ordinances in conflict with the provisions of this ordinance are hereby repealed. The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application.

SECTION 4. This ordinance shall take effect the latter of fifteen (15) days after first reading or immediately upon final passage, the public welfare requiring it.

ORDINANCE O-7-2024

AMENDING CERTAIN PORTION OF TITLE 14 (ZONING AND LAND USE CONTROL) CHAPTER 14 (SIGNS) OF THE CITY OF LAKELAND'S MUNICIPAL CODE PERTAINING TO SECTION 14-405

First Reading: July 18, 2024
Public Hearing:
Final Reading:

ATTEST:

______________________________	______________________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

(i) A maximum of one (1) shopping center sign shall be allowed per street frontage and shall be located only on an arterial road (Canada Road, Highway 64, or Highway 70).

(ii) The maximum total sign area shall be one hundred fifty (150) square feet

(iii) The maximum size of the directory space shall be one hundred twenty (120) square feet.

(iv) The maximum height of the sign shall not exceed fifteen feet (15').

(v) The maximum width of the sign face shall be ten feet (10').

(vi) The maximum individual tenant space on the sign shall be fifteen (15) square feet.

(vii) The minimum letter height allowed for tenant identification on the sign shall be ten inches (10").

(viii) The minimum setback from right-of-way is ten feet (10').

(ix) No shopping center sign shall be located within five hundred feet (500') of another shopping center sign.

(x) The shopping center sign shall include the street address of the center, or the address range if more than one (1) address is included in the project.

(xi) The sign shall be placed upon a brick or stone base a minimum of eighteen inches (18') in height measured from finished grade.

(xii) The base of the sign shall be landscaped with evergreen and deciduous shrubbery and seasonal colors on each side of the sign in at least an area equivalent to the total sign area of each face of the sign.

(xiii) No sign within six hundred feet (600') of any residential district shall be illuminated between the hours of midnight and 6:00 A.M. unless the sign is visibly obstructed from the residential district. (1989 Code, § 4-204, as amended by Ord. #192, Dec 1996, replaced by Ord. #03-41, June 2003, and amended by Ord. #04-59, March 2004, Ord. #07-108, Aug. 2007, Ord. #07-109, Aug. 2007, Ord. #12-177, Aug. 2012, and replaced by Ord. #16-245, Oct. 2016)

14-405. <u>Prohibited signs and devices</u>. All signs not express permitted under this chapter or exempt from regulation as provided for in this chapter are prohibited. Such signs include, but are not limited to:

(1) Signs which are of a size, location, movement, content, coloring, or manner or illumination which may be confused with or construed as a traffic control device or which hide from view any traffic or street sign or signal;

(2) Signs which contain or are an imitation of an official traffic sign or signal or contain the words "Stop," "Go Slow," "Caution," "Yield," "Danger," "Warning" or similar words;

(3) Signs which show pictures of human figures, animals or food, and signs which contain characters, cartoons or statements of an obscene, indecent or immoral character which would offend public morals or decency;

(4) Signs which are of a size, location, movement, content, coloring, or manner or illumination which may be confused with or construed as a traffic control device or which hide from view any traffic or street sign or signal;

(5) Signs which purport to be, or are an imitation of, or resemble an official traffic sign or signal;

(6) Changeable copy signs (manual and automatic), except for civic, institutional and schools. Any changeable copy sign (manual) that does not have a locked, vandal-proof access cover;

(7) Canopies with backlighting shall not be allowed;

(8) Any internally illuminated sign, unless permitted in a commercial district;

(9) Beacons;

(10) Rotating signs;

(11) Snipe signs, or off-premise signs attached to utility poles, trees, or any like freestanding structure;

(12) Windblown devices;

(13) Flashing signs;

(14) Open channel letter signs;

(15) Projecting signs;

(16) Canopy signs;

(17) Marquee signs;

(18) Tag signs;

(19) Portable signs;

(20) Double-faced, "V"-type back-to-back signs;

(21) Pole signs;

(22) Project signs;

(23) Inflatable signs;

(24) Signs painted on or attached to balloons and other such devices, whether hot air or cold air or gas filed;

(25) Animated signs;

(26) Signs which emit audible sound, odor or visible matter;

(27) Off-premise signs;

(28) Any commercial sign located in a residential district not otherwise provided for in this chapter;

(29) Strips or strings of lights outlining property lines, sales areas, roof lines, doors, window, wall edges, or other architectural elements of a building, provided, however, this prohibition shall not apply generally to holiday decorations and lighting;

(30) Neon and other similar type signs located in such a manner as to attract public attention from outside the building that:

(a) Contain a message clearly intended for public recognition outside the buildings such as "drive thru" and other similar messages; or

(b) Are legible from the public right-of-way or adjacent property; provided, however, an illuminated sign containing the word "Open" may be displayed in the front window of a tenant space provided such sign does not exceed four (4) square feet in sign area and must be turned off after business hours or when the tenant space is not being occupied;

(31) Signs attached to, suspended from or painted on any vehicle which is regularly parked on any street or private property when one of the purposes of so locating such vehicle is to display, demonstrate, and advertise or attract the attention of the public:

(a) It is not a violation of this section merely to have a common logo of business sign attached to, suspended from, or painted on a company vehicle regularly engaged in the business of the owner, and;

(b) When appropriate authorities determine that a vehicle is being regularly parked in a manner that violates this chapter, the city will issue a single notice of violation to the owner of the vehicle, to remove said vehicle from the premises. Failure to remove said vehicle might result in further legal action including the removal of said vehicle by the city.

(32) Any sign attached to an accessory structure, except an incidental sign, if such sign is legible from the public right-of-way or from an adjoining property;

(33) Signs which are structurally unsound or which are rendered structurally sound by guy wires or unapproved facing or bracing;

(34) Abandoned, neglected or dilapidated signs;

(35) Any other attention-attracting device, except for those conforming to the dimensional, design, lighting and other standards applicable to a sign in the same location;

(36) Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress, or egress to any building;

(37) Ground signs exceeding thirty-two (32) square feet in copy area and/or signs and sign structures in excess of seventy-two inches (72") in height unless otherwise provided for in this chapter;

(38) Signs in any area designated as an undisturbed buffer pursuant to a federal, state or local law, pursuant to a condition of approval for a subdivision, planned development or site plan;

(39) Signs which advertise an activity illegal under federal laws, the laws of the State of Tennessee, or any laws of Shelby County or the City of Lakeland; and

(40) Any sign that exhibits statements, words or pictures of an obscene nature.

(41) Signs not expressly permitted in this chapter are prohibited. (1989 Code, § 4-205, as replaced by Ord. #03-41, June 2003, amended by Ord. #04-59, March 2004, and replaced by Ord. #16-245, Oct. 2016)

14-406. Design and construction standards. (1) Construction standards. All signs shall be designed, constructed and maintained in accordance with the following standards:

(a) All signs shall comply with applicable provisions of local, state and federal building codes including seismic design standards and wind load design specifications.

(b) Electrical signs that have internal wiring or lighting equipment, and external lighting equipment that directs light on signs, shall not be erected or installed until an electrical permit has been obtained from the city or authority having jurisdiction. All such signs and equipment shall bear the seal of approval of an electrical testing laboratory that is nationally recognized as having the facilities for testing and requires proper installation in accordance with the National Electrical Code. All wiring to electrical signs or to freestanding equipment that lights the sign shall be installed underground.

(c) Except for permitted banners, flags, temporary signs and window signs conforming in all respects with the requirements of this chapter, all signs shall be constructed of permanent materials and shall be attached to the ground, a building or another structure by direct attachment to the wall, frame or structure.

(d) All ground-mounted signage shall include landscaping around the entire base of the sign structure. Landscaping shall consist of multiple rows of evergreen and deciduous plant materials and seasonal colors that add visual interest to the sign. All landscaping shall be irrigated. All plant materials shall be properly maintained including the immediate removal and replacement of any dead or diseased plant materials.

(2) Maintenance standards. All signs shall be maintained in good structural condition, in compliance with all building and electrical codes, and in conformance with this chapter. specifically:

(a) A sign shall have no more than twenty percent (20%) of its surface area covered with disfigured, cracked, ripped or peeling paint, poster paper or other material for a period of more than thirty (30) days.

(b) A sign shall not stand with bent or broken sign facing, with broken supports, with loose appendages or struts, or more than fifteen degrees (15E) from vertical for a period of more than ten (10) days.

(c) A sign shall not have weeds, trees, vines, or other vegetation growing upon it, or obscuring the view of the sign from the public

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Ordinance - First Reading** - amending the fiscal year 2024 annual budget, passed by ordinance O-10-2023, as amended by ordinances O-3-2024 and O-6-2024.

Staff Contact: Michael Walker, City Manager

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve ordinance O-8-2024.

BUDGET IMPACT

This ordinance increases total appropriations in the Solid Waste fund for fiscal year 2024 by $309,000.

DISCUSSION

Under previous departmental leadership, the Solid Waste fund budget for contracted services (trash collection) was originally set at a level lower than actual results for several prior fiscal years. This amendment prevents the Solid Waste fund from exceeding total appropriations. All resulting contracted services costs are in accordance with previously approved collection agreements.

ORDINANCE O-8-2024

AMENDING THE FISCAL YEAR 2024 ANNUAL BUDGET, PASSED BY ORDINANCE O-10-2023, AS AMENDED BY ORDINANCES O-3-2024 AND O-6-2024

WHEREAS, the City of Lakeland adopted the fiscal year 2023-2024 budget by passage of Ordinance O-10-2023 on June 15, 2023; and,

WHEREAS, the City of Lakeland amended the fiscal year 2023-2024 budget by passage of Ordinance O-3-2024 on April 18, 2024; and,

WHEREAS, the City of Lakeland further amended the fiscal year 2023-2024 budget by passage of Ordinance O-6-2024 on June 18, 2024; and,

WHEREAS, expenditures in the Solid Waste Fund are expected to exceed the budget, as amended:

NOW, THEREFORE, BE IT ORDAINED by the Board of Commissioners of the City of Lakeland, Tennessee, that changes be made to the fiscal year 2023-2024 annual budget as follows:

SECTION 1. Ordinance O-10-2023, Ordinance O-3-2024, and Ordinance O-6-2024 are hereby amended by increasing contracted services (and thereby total appropriations) in the Solid Waste Fund by three hundred nine thousand dollars ($309,000).

SECTION 2. The Board of Commissioners authorizes the City Manager to cause said changes to be made in the accounting system.

SECTION 3. All ordinances in conflict with the provisions of this ordinance are hereby repealed. The provisions of this ordinance are severable. If any provision of this ordinance or the application thereof to any person or circumstance is held to be invalid by a court of competent jurisdiction, such invalidity shall not affect other provisions or applications of this ordinance that can be given effect without the invalid provision or application.

SECTION 4. This ordinance shall take effect the latter fifteen (15) days after first reading or immediately upon final passage, the public welfare requiring it.

ORDINANCE O-8-2024

AMENDING THE FISCAL YEAR 2024 ANNUAL BUDGET,
PASSED BY ORDINANCE O-10-2023, AS AMENDED
BY ORDINANCES O-3-2024 AND O-6-2024

First Reading: July 18, 2024
Public Hearing:
Final Reading:

ATTEST:

Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

RESOLUTION R-95-2024

APPROVING REAPPOINTMENT TO THE COMMUNITY ADVISORY BOARD

WHEREAS, the City of Lakeland Community Advisory Board ("CAB") plays a vital role by ensuring open and frequent communications between residents and the City of Lakeland; and,

WHEREAS, the CAB has four positions with terms that expired July 1, 2024; and,

WHEREAS, the CAB bylaws set board membership terms at two (2) years; and,

WHEREAS, the Board of Commissioners has the authority to appoint members to the CAB:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the following members to the Community Advisory Board are reappointed to serve two-year terms ending July 1, 2026:

Kimberly Rossie	District 2
Jason Valentine	District 3
Benjamin Ledsinger	District 4
Megan Pope	District 7

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee this 18th day of July 2024, the public welfare requiring it.

ATTEST:

Josh Roman
Mayor

Cheyenne Carter
City Recorder

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - approving a contract with Smith Seckman Reid, Inc. for the replacement of Lift Station #24 for Lakeland Hills Dr.

Staff Contact: Paul Posey, Staff Engineer

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve Resolution R-88-2024.

BUDGET IMPACT

This item is allocated in the fiscal year 2024 annual spending plan for the Sewer Fund.

DISCUSSION

The purpose of this project is to replace the existing Pump Station #24 with a new pump station. The new station will be designed to match Lakeland's other lift stations. This will include creation of plans and specifications for a new lift station wet well, two new submersible pumps, a new valve vault, new electrical gear and control panels.

RESOLUTION R-88-2024

APPROVING A CONTRACT WITH SMITH SECKMAN REID, INC. FOR THE REPLACEMENT OF LIFT STATION #24 FOR LAKELAND HILLS DR.

WHEREAS, the City desires to replace Lift Station #24 for Lakeland Hills Dr.; and,

WHEREAS, Smith Seckman Reid, Inc. ("SSR") was selected from six proposals; and,

WHEREAS, SSR is willing and able to provide these services as specified in the Contract documents; and,

WHEREAS, funding for this work is allocated in the fiscal year 2024 annual spending plan for the Sewer Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland Tennessee, that the City Manager is hereby authorized and directed to execute, and the City Recorder to attest, an agreement with Smith Seckman Reid, Inc. (SSR) to replace Lift Station #24 for Lakeland Hills Dr. in the amount of one hundred forty-two thousand one hundred and seventy dollars ($142,170.00).

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee on this 18th day of July 2024, the public welfare requiring it.

ATTEST:

__________________________	__________________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

Smith Seckman Reid, Inc.

2650 Thousand Oaks Boulevard
Suite 4200
Memphis, TN 38118
(901) 683-3900
FAX (901) 683-3990
www.ssr-inc.com

July 1, 2024

Mr. Paul Posey
Staff Engineer
City of Lakeland
Lakeland, TN 38002

RE: Proposal for Engineering Services for Pump Station #24 Replacement.

Dear Mr. Posey,

Smith Seckman Reid, Inc. (SSR) would like to thank the City of Lakeland (the City) for the opportunity to to investigate the Pump Station #24 issues and submit this proposal for engineering design services for its replacement. We have developed the scope of work below based on previous discussions and observations with City staff. Our understanding of the project is as follows.

Project Understanding:

The purpose of this project is to replace the existing Pump Station #24 with a new pump station. The new station will be designed to match Lakeland's other lift stations. This will include creation of plans and specifications for a new lift station wet well, two new submersible pumps, a new valve vault, new electrical gear and control panels. The scope will also include demolition plans for the existing pump station. The tasks involved to perform this work are as follows:

Project Management:

- Project Coordination – coordinate with the City to provide progress design updates, project review meetings, and other activities to help keep the City generally informed of the design progress of the project.

- Project Review Meetings –scheduling, setting the agenda, and producing meeting minutes for all project meetings as defined in the tasks below.

- Project Administration – administrative and accounting activities related to the day-to-day management of this project and internal accounting.

Survey and Geotechnical:

SSR will procure the Survey and Geotechnical Consultants ("Specialty Consultants"). The Owner agrees to hold SSR harmless from any and all losses, claims, liabilities, expenses and/or damages due to or arising out of any act, error or omission in the performance of any related services performed by the Specialty Consultants. The Owner agrees to pursue recovery of and assert claims based upon, any such losses, claims, liabilities, expenses and/or damages solely and directly against the Specialty Consultants engaged by SSR. In consideration for such indemnification, SSR hereby assigns to the Owner any rights and/or claims that SSR has with respect to Specialty Consultants. Owner agrees to abide by any limitation of liability that might be in the SSR Specialty Consultants' Agreement.

Topographic field surveys will be tied to the Tennessee State Plane Coordinate System and referencing local vertical benchmarks. The survey corridor will generally be in the area surrounding the existing Pump Station #24.

Easements

SSR will prepare up to three (3) stamped plats for new temporary and permanent easements required for the construction of the new Pump Station #24. These plats will be delivered to the City for their use in acquiring the required easements. SSR's participation in easement acquisition will be limited to the supply of these three plats.

Design:

SSR will utilize Record Drawing data and survey information to establish the site layout plans and location of existing utilities in the vicinity of the proposed improvements.

SSR will provide drawings and specifications for the design of a new lift station with two new submersible pumps (one duty, one standby), and plans for demolition of existing pump station including regrading of area to minimize runoff collection.

Preliminary Design

- Project kickoff meeting between the City and SSR to discuss the overall project scope, schedule, and other pertinent items critical to the success of the project.
- Collect field data and review record documents for existing station.
- Contract Geotechnical Investigation and review report
- Perform Site topographic survey
- Review site and develop pump station layout
    - Coordination with existing sewer lines. Existing lines will not be moved but new tie-ins will be designed with the new lift station.
    - Hydraulic and wet well design calculations.
    - Confirmation of near term and long-term flow projections.
        - Existing sewers are assumed to be sized for projected flows and pumps are assumed to be sized for flows with one Duty Pump and One Standby per TDEC guidelines/EPA Class I reliability.
- Analyze different pump options and select pump for basis of design.
- Review existing Instrumentation and Controls and Electrical capacity at site.
- Prepare Preliminary Specifications and Drawings.
- Prepare preliminary construction cost estimate.
- Review of recommendations with Lakeland staff.
- Review provisions to mitigate stormwater runoff capture.
- 30% Design Meeting with Owner.

Deliverables:

- Kickoff meeting minutes.
- Electronic pdf copy of Geotechnical Investigation Report
- Electronic pdf copy of 30% drawing and specifications.
- Preliminary opinion of probable costs.

Final Design

- Design of new pumping station including wet well, valve vault, pumps, and tie-ins to existing infrastructure.
- Demolition and site grading plan
- Design of all necessary structural, mechanical, electrical, plumbing and controls systems necessary to provide operational facilities, including new controls panels.
- Review of final design plans with City staff.
- Finalize opinion of probable cost.
- Identify additional temporary and permanent easements required
- Submit and receive approval from TDEC for drawings and specifications.

Deliverables:

- Electronic copy in PDF format of final drawings and specifications.
- Up to three (3) signed plats for temporary/permanent easements
- Final opinion of probable cost.

Additional Services

Any services not specifically provided for in the above scope will be billed as additional services and performed at our then current hourly rates. SSR will not begin work on any additional services without the written authorization of the scope and fee of those services from the City. Additional services SSR can provide include, but are not limited to, the following:

- Additional meetings (meetings, graphics, project website, etc.)
- Bidding Assistance
- Construction Administration Services including site visits, submittal review, RFI responses
- TDEC Preliminary Engineering Report (PER)
- Preparation of application and supporting documentation for grants, loans, etc in connection with the project.
- Verifying existing drawings are accurate (force main profile).
- Force main modifications, i.e., additional air valves.
- Assistance in connection with bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services.
- Bringing additional power onsite as it is our understanding the existing utility service is sized for the new equipment.
- Additional time and service required from delays, changes, or price increases occurring as a direct or indirect result of material, equipment, or energy shortage.
- Design of new buildings on site
- Easement procurement or negotiation assistance.

Information Provided By Client

SSR shall be entitled to rely on the completeness and accuracy of all information provided by the Client or the Client's consultants or representatives. The Client shall provide all information requested by SSR during the project within two weeks of the notice to proceed, including but not limited to the following:

- Summary of known operational and maintenance issues.
- Existing plans for utilities within the project corridor.
- Any plans from previous projects within the project corridor
- Pump curves from the existing Pump Station 24 pumps
- Existing drawings for the facility and force main plan and profiles.
- SCADA and any flow monitoring data available, a minimum of 48 hours of continuous flow data will be required.

Schedule

The engineering design and construction documents will be completed and ready for OWNER review no later than the dates below:

Preliminary Design and Cost Estimate – September 27, 2024

Construction Documents for TDEC Review– December 20, 2024

Fees

SSR will be compensated on a Lump Sum basis per the breakdown below.

Preliminary Engineering and Cost Estimate – $41,360
Final Engineering – $80,390
Geotechnical Investigation – $12,420
Site Survey and Plat Preparation – $8,000

TOTAL LUMP SUM - $142,170

If the City requires additional services or scope related to this project, the work will be compensated at an agreed lump sum price or based upon the current Standard Hourly Rates. These additional services will only be performed upon written authorization from the OWNER.

Known Reimbursables (reimbursed at cost unless noted otherwise):

- TDEC Review Fee
- Final Bid Set Drawings Specifications Printed (if desired)
- As-Built Drawings Printed (if desired)

Lump sum fees will be invoiced monthly based upon the overall percentage of services performed. Payment will be due within 25 days of your receipt of the invoice.

We appreciate the opportunity to provide these services to you and we look forward to working with you on this project. Please contact me if you have any questions.

Very truly yours,

Tiffany M. Heard

Tiffany Heard, PE
Principal

If you accept this proposal, please indicate that by signing below and returning the signed proposal to me. Thanks!

City of Lakeland Representative

____
(Signature)

____
(Date)

____
(Print or Type Name and Title)

CONTRACT FOR PROFESSIONAL SERVICES

PART I - AGREEMENT

THIS AGREEMENT, entered into by and between the City of Lakeland, a Municipal Corporation, 10001 U.S. Highway 70, Lakeland, Tennessee, hereinafter referred to as the “Owner,” and ____________ herein after referred to as the "Contractor."

WITNESSETH:

WHEREAS, the Owner seeks services with Smith Seckman Reid, Inc; and,

WHEREAS, the Contractor represents that it is ready, willing, and able to provide the professional services to Owner as required by this Contract; and,

WHEREAS, the Owner desires to retain the Contractor to such services.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein to be performed, the parties agree as follows:

1. <u>SCOPE OF SERVICES:</u>

Contractor shall perform services in connection with the attached proposal dated July 1, 2024 for engineering services for Pump Station #24 Replacement.

2. <u>TIME OF PERFORMANCE:</u>

The contract shall be effective starting July 18, 2024 until January 31, 2025. The services of the Contractor shall be undertaken and completed within a period reasonable for such work as outlined in each task order.

3. <u>COMPENSATION:</u>

In consideration of the performance of services rendered under this Contract, the Contractor shall be compensated for services performed, not to exceed a fee of One Hundred Forty-Two Thousand One Hundred and Seventy Dollars ($142,170).

4. <u>METHOD OF PAYMENT:</u>

Payment will be paid following receipt of an itemized invoice of services rendered in conformance with the Contract, from the Contractor. Contractor shall submit an invoice for payment from the Contractor specifying that he has performed the services rendered under this Contract, in conformance with the Contract, and that he is entitled to receive the amount requested under the terms of the Contract:

5. TERMS AND CONDITIONS:

This Contract is subject to and incorporates the provisions attached hereto as PART II - GENERAL TERMS AND CONDITIONS.

6. EXTENT OF AGREEMENT:

The Contract represents the entire and integrated Contract between the Owner and the Contractor, and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Owner and the Contractor.

IN WITNESS WHEREOF, the Owner and the Contractor have executed this Contract as of the date below.

DATED THIS day of , 2024.

APPROVED AS TO FORM:

____

CONTRACTOR:

ATTEST:

By:______________________________	By: ____________________________
Title:____________________________	Title: ___________________________
ATTEST:	CITY OF LAKELAND, TENNESSEE A Municipal Corporation
______________________________ Cheyenne Carter City Recorder	______________________________ Josh Roman Mayor

CONTRACT FOR PROFESSIONAL SERVICES

PART II - GENERAL TERMS AND CONDITIONS

1. TERMINATION OF CONTRACT:

The Owner or Consultant may terminate this Contract anytime by providing thirty (30) days written notice to Owner or Consultant of intent to terminate said Contract. In such event, all finished or unfinished documents, data, studies and reports prepared by the Consultant under this Contract shall, at the option of the Owner, become its property, and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Consultant shall not be relieved of liability to the Owner through damages sustained by the Owner, by virtue of termination of the Contract by Consultant or any breach of the Contract by the Consultant, and the Owner may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due the Owner from the Consultant are determined.

2. CHANGES:

The Owner may, from time to time, request changes in the scope of the services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon between the Owner and the Consultant, shall be incorporated in written amendments to this Contract. There shall be no increase in the amount of Consultant's compensation, as set forth above, unless approved by Resolution adopted by Owner.

3. ASSIGNABILITY:

The Consultant shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Owner: provided, however, that claims for money due or to become due the Consultant from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer shall be furnished to the Owner.

4. AUDIT:

The Owner or any of its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant which are directly pertinent to the specific contracted Project for the purpose of making audit, examination, excerpts, and transactions.

5. EQUAL EMPLOYMENT OPPORTUNITY:

In carrying out the program, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. The Consultant shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, or disability. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this nondiscrimination clause. The Consultant shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability.

6. OWNER OF PROJECT MATERIALS:

It is agreed that all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, films, duplicating plates, and reports prepared by the Consultant under this Contract shall be considered the property of the Owner, and upon completion of the services to be performed, they will be turned over to the Owner provided that, in any case, the Consultant may, at no additional expense to the Owner, make and retain such additional copies thereof as Consultant desires for its own use; and provided further, that in no event may any of the documents, data, studies, surveys, drawings, maps, models, photographs, films, duplicating plates, or other reports retained by the Consultant be released to any person, agency, corporation, or organization without the written consent of the Owner. Except as required law, regulation, or court order, provided that the Consultant shall give prompt notice to the Owner to enable them to seek a protective order or take other appropriate action.

7. FINDINGS CONFIDENTIAL:

All reports, information, data, etc., given to, or prepared or assembled by the Consultant under this Contract, shall be deemed confidential and none shall be made available to any individual or organization by the Consultant without the prior written consent of the Owner. Except as required law, regulation, or court order, provided that the Consultant shall give prompt notice to the Owner to enable them to seek a protective order or take other appropriate action.

8. GOVERNING LAW:

This Contract has been executed by the parties hereto on the day and year first above written and shall be governed by the laws of the State of Tennessee. The Consultant shall also comply with all applicable laws, ordinances, and codes of the Federal, State, or local governments and shall not trespass on any public or private property in performing any of the work embraced by this Contract.

9. PERSONNEL:

The Consultant represents that it has, or will secure, all personnel required in performing the services under this Contract. Such personnel shall not be employees of the City of Lakeland. All of the services required hereunder shall be performed by the Consultant, or under its supervision, and all personnel engaged in the work shall be fully qualified. All personnel employed by Consultant shall be employed in conformity with applicable State or Federal laws.

10. SUBCONSULTANT:

The Consultant shall not employ any Subconsultant to perform any services in the scope of this Project, unless said Subconsultant is approved in writing by the Owner. Said Subconsultant shall be paid by the Consultant.

11. INSURANCE:

Prior to commencement of work, Consultant shall procure, and at all times thereafter maintain, with insurer acceptable to the Owner, the following minimum insurance protecting the Consultant and Owner against liability from damages because of injuries, including death suffered by persons, including employees of the Owner, and liability from damages to property arising from and growing out of the Consultant's negligent operations in connection with the performance of this contract.

		LIMITS
A.	Worker's Compensation	Statutory
B.	Comprehensive General Liability Premises/Operations Products/Completed Operations Contractual Liability	$500,000 Per occurrence
C.	Professional Liability/Errors and Omissions	$500,000

Consultant shall provide Owner with certificates evidencing such insurance as outlined above prior to beginning any work under this agreement. Such certificates shall provide the thirty (30) days advance written notice to Owner of cancellation, material change, reduction of coverage, or non-renewal, and shall list the City of Lakeland as an additional insured.

In addition, Consultant shall provide Owner with copies of insurance policies and/or policy endorsements listing the City of Lakeland as an additional insured. City's failure to request or review such insurance certificates or policies shall not affect City's rights or Consultant's obligations hereunder.

Consultant agrees to forever indemnify the City and hold it harmless from all liability for damage to property or injury to or death to persons, including all costs, expenses, and attorney's fees incurred related thereto, arising from negligence of the Consultant.

12. INTENT:

Consultant represents that it has read and agrees to the terms of this Contract and further agrees that it is the intent of the parties hereto that Consultant shall perform all of the services to be provided hereunder for the compensation set forth hereinabove. Consultant also agrees that it is the specific intent of the parties hereto, and a material condition of this Contract, that it shall not be entitled to compensation for other services rendered unless specifically authorized by the Owner by Resolution of its governing body. Consultant agrees that it has made a careful examination of the services to be rendered hereunder, and that the Contract price set forth hereinabove is adequate compensation for all the services to be rendered under the terms of this Contract.

13. GOVERNMENTAL CLAIMS ACT:

The City does not waive any right or rights it may have pursuant to the Tennessee Governmental Claims Act, Tennessee Statute Sections 29-20-101, et seq. The City specifically reserves the right to assert any and all immunities, rights and defenses it may have pursuant to the Tennessee Governmental Claims Act.

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - approving a contract with Geotechnology, LLC dba UES for geotechnical exploration services for the Oliver Creek Interceptor project.

Staff Contact: Paul Posey, Staff Engineer

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve Resolution R-89-2024.

BUDGET IMPACT

This item is allocated in the fiscal year 2024 annual spending plan for the Sewer Fund.

DISCUSSION

The purpose of this project is to obtain geotechnical design information for the proposed pumping stations and Vortex Flow Insert tower associated with the Oliver Creek Sewer Interceptor project. These services will include five soil borings, two at each of the pumping station sites and one at the Vortex Flow Insert (VFI) tower site. Soil analysis will be performed to evaluate the soil conditions and provide recommendations for foundations, drainage, etc.

RESOLUTION R-89-2024

APPROVING A CONTRACT WITH GEOTECHNOLOGY, LLC, dba UES FOR GEOTECHNICAL EXPLORATION SERVICES FOR THE OLIVER CREEK INTERCEPTOR PROJECT

WHEREAS, the City desires to perform geotechnical exploration at sites of the proposed pumping stations and vortex flow tower associated with the Oliver Creek Interceptor project; and,

WHEREAS, Geotechnology, LLC, dba UES is willing and able to provide these services as specified in the contract documents; and,

WHEREAS, funding for this work is allocated in the fiscal year 2024 annual spending plan for the Sewer Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland Tennessee, that the City Manager is hereby authorized and directed to execute, and the City Recorder to attest, an agreement with Geotechnology, LLC dba UES to conduct geotechnical exploration services for the Oliver Creek Interceptor project in the amount of fifteen thousand and two hundred dollars ($15,200.00).

BE IT FURTHER RESOLVED, that the Board of Commissioners authorize an additional five thousand dollars ($5,000.00) for a contingency fund to be used to pay for items that may arise outside of the contract price and for unforeseen work and that the City Manager is hereby authorized to make verified partial payments when necessary throughout the project to a total fixed cost amount of twenty thousand and two hundred dollars ($20,200.00).

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee on this 18th day of July 2024, the public welfare requiring it.

ATTEST:

Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

Via email: eharrell@lakelandtn.org

July 10, 2024

Emily Harrel, P.E.
City Engineer
City of Lakeland
10001 Highway 70
Lakeland, Tennessee 38002

Re: Proposal for Geotechnical Exploration
Oliver Creek SSI Pump Stations and VFI Tower
Lakeland, Tennessee
Proposal No. P046189.01

Dear Ms. Harrell:

We understand geotechnical design information is required for the proposed pumping stations and Vortex Flow Insert tower associated with the Oliver Creek sanitary sewer in Lakeland, Tennessee. We have prepared this proposal based on our review of the information included in an email from Paul Posey, staff engineer and Stormwater Program Manager, on July 2, 2024, a review of the provided plans[1], our archival geotechnical data, and our experience as geotechnical engineers in the project area.

Presented in the following table is a summary of the proposed geotechnical scope of work and the estimated fee.

Table 1: Summary of Proposed Scope

Number of Borings	Depth of Borings	Maximum Linear Feet of Drilling	Estimated Base Fee[a]
5	40 feet	200	$15,200.00

Geotechnology LLC, dba UES is pleased to submit this proposal, and we invite you to review the proposal and contact us with any questions about the scope of work or estimated fees.

[1] Plan set titled *Oliver Creek Sanitary Sewer Interceptor Contract C - Pumping Stations and Vortex Flow Insert Tower, City of Lakeland, Tennessee Engineering Department*, drawn by Alan & Hoshall, dated September 20, 2022.

Presented in the remainder of this proposal is our understanding of the project and the details of our proposed services.

1.0 PROJECT INFORMATION

Based on a review of the provided information and available imagery, we understand this project will include the design and construction of two pumping stations and a Vortex Flow Insert (VFI) tower at three sites, referred to herein as the Fletcher Creek, Fletcher Trace, and Laurel Hill site in Lakeland, Tennessee.

Pumping stations are planned for the Fletcher Creek and Fletcher Trace sites. The Fletcher Creek site is located in the northeast quadrant of the intersection of US Highway 64 and Champions Drive and currently developed as a landscape area for a nearby apartment complex. The pumping station at this site will be approximately 24 feet below finished grade and approximately 3 feet fill will be required achieve finished grades. The Fletcher Trace site is located in the northwest corner of the intersection of US Highway 64 and Fletcher Trace Parkway. This site is currently developed as landscape and parking areas for nearby commercial properties. This pumping station will be approximately 22 feet below finished grade. Up to 2 feet of cut will be required to achieve finished grades.

A Vortex Flow Insert tower is planned for the Laurel Hill site which is located in a partially wooded and grass-covered area bound to the west and east by Swan Hill Drive and Canada Road. Falcon Drive and a residential neighborhood are located on the west side of the site. The proposed tower will be 40-foot-tall cylindrical tower comprised of 29 feet of cast-in-place concrete walls and 11 feet of aluminum gazebo grain and pitched roof. The anticipated load of the tower will 92 kips (Dead + Live). Less than 2 feet of grade change will be required to achieve design grades at this site.

2.0 SCOPE OF SERVICES

2.1 Geotechnical Exploration

The purposes of our services are to explore the subsurface conditions and provide geotechnical recommendations for the design and construction of the project. UES proposes the following scope of services for the geotechnical exploration:

- Perform a site reconnaissance.

- Drill five borings to a depth of 40 feet. Two borings will be within each of the planned pump stations footprint and one in the footprint of the VFI tower. In each boring, soil samples will be obtained by split-spoon sampling methods at regular intervals. Occasionally, Shelby tube samples of the soils will be recovered to obtain a relatively undisturbed soil sample for laboratory testing. A maximum of 200 linear feet of auger drilling and split-spoon sampling is budgeted.

- Perform laboratory tests on select soil samples to evaluate index and strength properties. Laboratory testing will include various combinations of the following tests: moisture content, Atterberg limits, and unconsolidated-undrained triaxial compression.

- Perform engineering analyses, including seismic site class evaluation. Seismic site class will be evaluated in accordance with Chapter 20 of ASCE 7-16.

- Settlement analyses will be based on the boring data and consolidation parameters. One consolidation test is planned.

- Prepare a report that summarizes the results of the borings, laboratory tests, and engineering analyses and provides geotechnical design and construction recommendations, including the following:

  - Site excavation and placement of fill

  - Seismic site class per the 2021 IBC

  - Foundation recommendations, including allowable bearing capacity of shallow foundations and acceptable foundation types

  - Drainage considerations and lateral earth pressures for use in the design of below-grade foundation walls and retaining walls

  - Buoyancy resistance

  - Comments on OSHA soil types for excavation

- Distribute the report in pdf format to The City of Lakeland

Our scope will also include the following auxiliary services to support the primary geotechnical services described previously:

- Staking and approximately locating the borings in the field by reconnaissance from existing physical features. Ground surface elevations can be approximated from a topographic plan if provided by the Client.

- Contacting Tennessee One-Call for member utility companies to locate public utilities within the proximity of the borings prior to drilling. **Locating of private utilities is excluded from our base estimate, and we require private utilities be located around the boring locations prior to our drill crew arriving at the site. Geotechnology offers these services at the exploration points as an optional service in this proposal. The client is responsible for accurately delineating the locations of all subterranean structures and utilities. UES will take reasonable precautions to avoid known subterranean structures. If locating of private**

subsurface utilities is required in the vicinity of the boring locations, UES should be contacted to provide an estimate for subcontracting of subsurface utility locating.

- Grouting and backfilling the borings with auger cuttings and plastic hole plugs upon completion of the drilling activities.

Our scope of services does not include liquefaction hazard evaluation, any environmental assessment, investigation, or study for the presence or absence of wetlands or hazardous or toxic materials in the soil, surface water, groundwater, or air, on or below or around the site.

A copy of "Important Information about This Geotechnical Engineering Proposal" published by the Geoprofessional Business Association (GBA) is enclosed for your review.

2.2 Site Access and Restoration

Any restrictions or requirements imposed by governmental agencies or others regarding site clearing, access limitation, utility clearance, or restoration are considered beyond our scope of services. Drill rig access to boring locations in unpaved areas may leave ruts in the soil or grass. Our scope does not include restoration of ruts or other disturbance caused by the drill rig.

We have assumed we will be able to work during normal business hours. Please contact UES to revise this proposal if drilling should take place outside normal business hours.

2.3 Anticipated Subsurface Conditions

The budgeted linear footage of drilling and sampling is based on an anticipated subsurface profile of clay overlying sand. If unusual or erratic subsurface conditions are encountered, we will contact you to discuss our recommended changes prior to expanding the scope of services.

3.0 SCHEDULE AND FEE

Based on a Notice to Proceed dated July 10, field operations could begin in around 3 weeks. However, the schedule for field operations will be provided after receiving a notice to proceed. It will take approximately three days to complete field operations, weather permitting. Normally an allowance of two weeks following completion of fieldwork is allotted for submittal of the geotechnical exploration report.

Our services are offered in accordance with the accompanying Terms for our Geotechnical Services (Terms). The cost of our services will be the lump sum fees provided in Table 1 on page 1 of this proposal. This sum includes drilling, sampling, laboratory testing, boring log preparation, engineering analyses, and report preparation.

This proposal and fee estimate have been prepared using our standard fee schedule and with the assumption that our Terms will be used as the contract mechanism. We reserve the right to revise this proposal and increase our fee estimate, at any time, if our Terms are not used or if any flow down and/or contract provisions are required by Client or Owner to conform with any local, state or federal wage act requirements, including but not limited to the Davis-Bacon Act, as Amended, the McNamara-O'Hara Service Contract Act, etc., the required use of union labor, or for any required safety, security, vehicle, drug and alcohol testing, or any third party payment fees, or other requirements not specified in the Client's request for proposal or not defined in our scope of services.

4.0 ACCEPTANCE

If this proposal, including the contractual terms, is acceptable, please sign in the space provided on the following Terms and return one executed copy of the Terms and this proposal to our office as your authorization for us to proceed. For optional services, please initial the corresponding lines below to designate whether those services are authorized or not.

* * * * * *

We appreciate the opportunity to submit this proposal for the referenced project and look forward to hearing from you soon. If you have any questions or comments concerning this proposal, or if we may be of any other service to you, please do not hesitate to contact us.

Respectfully submitted,

Geotechnology LLC dba UES

John Henson, P.G.
Area Manager

JKH/ABM:abm

Attachments: "Important Information About This Phase Geotechnical Engineering Proposal"
Terms for UES's Services

Important Information about This
Geotechnical Engineering Proposal

Subsurface problems are a principal cause of construction delays, cost overruns, claims, and disputes.

While you cannot eliminate all such risks, you can manage them. The following information is provided to help.

Participate in Development of the Subsurface Exploration Plan

Geotechnical engineering begins with the creation of an effective subsurface exploration plan. This proposal starts the process by presenting an initial plan. While that plan may consider the unique physical attributes of the site and the improvements you have in mind, it probably does not consider your unique goals, objectives, and risk management preferences. Subsurface exploration plans that are finalized without considering such factors presuppose that clients' needs are unimportant, or that all clients have the same needs. *Avoid the problems that can stem from such assumptions* by finalizing the plan and other scope elements directly with the geotechnical engineer you feel is best qualified for the project, along with the other project professionals whose plans are affected by the geotechnical engineer's findings and recommendations. If you have been told that this step is unnecessary; that client preferences do not influence the scope of geotechnical engineering service or that someone else can articulate your needs as well as you, you have been told wrong. No one else can discuss your geotechnical options better than an experienced geotechnical engineer, and no one else can provide the input you can. Thus, while you certainly are at liberty to accept a proposed scope "as is," recognize that it could be a unilateral scope developed without direct client/engineer discussion; that authorizing a unilateral scope will force the geotechnical engineer to accept all assumptions it contains; that assumptions create risk. *Manage your risk. Get involved.*

Expect the Unexpected

The nature of geotechnical engineering is such that planning needs to *anticipate the unexpected*. During the design phase of a project, more or deeper borings may be required, additional tests may become necessary, or someone associated with your organization may request a service that was not included in the final scope. During the construction phase, additional services may be needed to respond quickly to unanticipated conditions. In the past, geotechnical engineers commonly did whatever was required to oblige their clients' representatives and safeguard their clients' interests, taking it on faith that their clients wanted them to do so. But some, evidently, did not, and refused to pay for legitimate extras on the ground that the engineer proceeded without proper authorization, or failed to submit notice in a timely manner, or failed to provide proper documentation. *What are your preferences? Who is permitted to authorize additional geotechnical services on your project? What type of documentation do you require? To whom should it be sent? When? How?* By addressing these and similar issues sooner rather than later, you and your geotechnical engineer will be prepared for the unexpected, to help prevent molehills from growing into mountains.

Have Realistic Expectations; Apply Appropriate Preventives

The recommendations included in a geotechnical engineering report are *not final*, because they are based on opinions that can be verified only during construction. For that reason, most geotechnical engineering proposals offer the construction observation services that permit the geotechnical engineer of record to confirm that subsurface conditions are what they were expected to be, or to modify recommendations when actual conditions were not anticipated. *An offer to provide construction observation* *is an offer to better manage your risk*. Clients who do not take advantage of such an offer; clients who retain a second firm to observe construction, can create a high-risk "Catch-22" situation for themselves. *The geotechnical engineer of record cannot assume responsibility or liability for a report's recommendations when another firm performs the services needed to evaluate the recommendations' adequacy*. The second firm is also likely to disavow liability for the recommendations, because of the substantial and possibly uninsurable risk of assuming responsibility for services it did not perform. Recognize, too, that no firm other than the geotechnical engineer of record can possibly have as intimate an understanding of your project's geotechnical issues. As such, reliance on a second firm to perform construction observation can elevate risk still more, because its personnel may not have the wherewithal to recognize subtle, but sometimes critically important unanticipated conditions, or to respond to them in a manner consistent with your goals, objectives, and risk management preferences.

Realize That Geoenvironmental Issues Have Not Been Covered

The equipment, techniques, and personnel used to perform a geoenvironmental study differ significantly from those used to perform a geotechnical study. *Geoenvironmental services are not being offered in this proposal. The report that results will not relate any geoenvironmental findings, conclusions, or recommendations*. Unanticipated environmental problems have led to numerous project failures. If you have not yet obtained your own geoenvironmental information, ask your geotechnical consultant for risk management guidance. *Do not rely on an environmental report prepared for someone else.*

Obtain Professional Assistance To Deal with Mold

Diverse strategies can be applied during building design, construction, operation, and maintenance to prevent significant amounts of mold from growing on indoor surfaces. To be effective, all such strategies should be devised for the express purpose of mold prevention, integrated into a comprehensive plan, and executed with diligent oversight by a professional mold prevention consultant. Because just a small amount of water or moisture can lead to the development of severe mold infestations, a number of mold prevention strategies focus on keeping building surfaces dry. While groundwater, water infiltration, and similar issues may be addressed as part of the geotechnical engineering study described in this proposal, the geotechnical engineer who would lead this project ***is not*** a mold prevention consultant; ***none of the services being offered have been designed or proposed for the purpose of mold prevention.***

Have the Geotechnical Engineer Work with Other Design Professionals and Constructors

Other design team members' misinterpretation of a geotechnical engineering report has resulted in costly problems. Manage that risk by having your geotechnical engineer confer with appropriate members of the design team before finalizing the scope of geotechnical service (as suggested above), and, again, after submitting the report. *Also retain your geotechnical engineer to review pertinent elements of the design team members' plans and specifications.*

Reduce the risk of unanticipated conditions claims that can occur when constructors misinterpret or misunderstand the purposes of a geotechnical engineering report. Use appropriate language in your contract documents. Retain your geotechnical engineer to participate in prebid and preconstruction conferences, and to perform construction observation.

Read Responsibility Provisions Closely

Clients, design professionals, and constructors who do not recognize that geotechnical engineering is far less exact than other engineering disciplines can develop unrealistic expectations. Unrealistic expectations can lead to disappointments, claims, and disputes. To help reduce the risk of such outcomes, geotechnical engineers commonly include a variety of explanatory provisions in their proposals. Sometimes labeled "limitations," many of these provisions indicate where geotechnical engineers' responsibilities begin and end, to help others recognize their own responsibilities and risks, thus to encourage more effective scopes of service. *Read this proposal's provisions closely*. Ask questions. Your geotechnical engineer should respond fully and frankly.

Rely on Your Geotechnical Engineer for Additional Assistance

Membership in the Geoprofessional Business Association (GBA) exposes geotechnical engineers to a wide array of risk management techniques that can be of genuine benefit to everyone involved with a construction project. Confer with a GBA-member geotechnical engineer for more information. Confirm a firm's membership in GBA by contacting GBA directly or at its website.

GEOPROFESSIONAL BUSINESS ASSOCIATION

8811 Colesville Road/Suite G106, Silver Spring, MD 20910
Telephone: 301/565-2733 Facsimile: 301/589-2017
e-mail: info@geoprofessional.org www.geoprofessional.org

TERMS FOR GEOTECHNOLOGY'S SERVICES

1 - THE AGREEMENT

a. This AGREEMENT is made by and between: **Geotechnology, LLC (Geotechnology)**, hereinafter referred to as GEOTECHNOLOGY, and **The City of Lakeland** hereinafter referred to as CLIENT.

b. The AGREEMENT between the parties consists of these TERMS, the attached PROPOSAL identified as Proposal No. **P046189.01 ,** dated **July 10, 2024** and any exhibits or attachments noted in the PROPOSAL. In the event of a conflict between the TERMS and the PROPOSAL, the provisions of the TERMS shall govern unless the PROPOSAL specifically indicates that it is to govern. Together, these elements will constitute the entire AGREEMENT superseding any and all prior negotiations, correspondence, or agreements either written or oral. Any changes to this AGREEMENT must be mutually agreed to in writing.

c. This proposal is valid for 30 days from **July 10, 2024**.

d. The technical pricing information contained in this PROPOSAL submitted by GEOTECHNOLOGY is to be considered confidential and proprietary and shall not be released or otherwise made available to any third party without the express written consent of GEOTECHNOLOGY.

e. It is intended by the parties to this AGREEMENT that GEOTECHNOLOGY'S services in connection with the project shall not subject GEOTECHNOLOGY'S individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, CLIENT agrees that as the CLIENT'S sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against GEOTECHNOLOGY, a Missouri corporation, and CLIENT expressly waives CLIENT's rights against any of GEOTECHNOLOGY'S employees, officers or directors.

2 - STANDARD OF CARE

a. CLIENT recognizes that conditions may vary from those observed at locations where borings, surveys, observations, or explorations are made, and that site conditions may change with time. Data, interpretations, and recommendations by GEOTECHNOLOGY will be based solely on information available to GEOTECHNOLOGY. GEOTECHNOLOGY is responsible for those data, interpretations, and recommendations, but will not be responsible for other parties' interpretations or use of the information developed.

b. GEOTECHNOLOGY offers different levels of services to suit the desires and needs of different clients. Although the possibility of error can never be eliminated, more detailed and extensive services yield more information and reduce the probability of error, but at increased cost. CLIENT has reviewed the scope of services and has determined that it does not need or want a greater level of service than that being provided.

c. The standard of care for all professional engineering and related services performed under this AGREEMENT will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. GEOTECHNOLOGY makes no warranties, express or implied, under this AGREEMENT or otherwise, in connection with any services performed or furnished by GEOTECHNOLOGY.

3 - SITE ACCESS AND SITE CONDITIONS

a. CLIENT will grant or obtain free access to the site for all equipment and personnel necessary for GEOTECHNOLOGY to perform the services set forth in this AGREEMENT. CLIENT will notify any and all possessors of the project site that CLIENT has granted GEOTECHNOLOGY free access to the site. GEOTECHNOLOGY will take reasonable precautions to reduce damage to the site, but it is understood by CLIENT that, in the normal course of the services, some damage may occur and the correction of such damage is not part of this AGREEMENT unless so specified in the PROPOSAL.

b. Unless indicated otherwise in the PROPOSAL, CLIENT is responsible for accurately delineating the locations of all subterranean structures and utilities. GEOTECHNOLOGY will take reasonable precautions to avoid known subterranean structures, and CLIENT waives any claim against GEOTECHNOLOGY arising from damage done to subterranean structures and utilities not identified or accurately located.

4 - CHANGED CONDITIONS

a. If, during the course of performance of this AGREEMENT, conditions or circumstances are discovered which were not contemplated by GEOTECHNOLOGY at the commencement of this AGREEMENT, GEOTECHNOLOGY shall notify CLIENT in writing of the newly discovered conditions or circumstances, and CLIENT and GEOTECHNOLOGY shall renegotiate, in good faith, the terms and conditions of this AGREEMENT.

5 - SAMPLES AND CUTTINGS

a. GEOTECHNOLOGY will dispose of soil and rock samples ninety (90) days after submittal of the report covering those samples. Further storage or transfer of samples can be made at CLIENT'S expense upon CLIENT'S prior written request.

b. Cuttings, rinse water, well development and other wastes will be left on site and are CLIENT's responsibility to dispose unless specifically addressed in the PROPOSAL.

c. CLIENT shall take custody of all monitoring wells, probe holes and borings installed by GEOTECHNOLOGY and shall take any and all necessary steps for the proper maintenance, repair or closure for such wells, probes, or borings at CLIENT'S expense.

6 - OBSERVATION

a. CLIENT recognizes that unanticipated or changed conditions may be encountered during construction and, principally for this reason, CLIENT shall retain GEOTECHNOLOGY to observe construction when GEOTECHNOLOGY has provided engineering services. CLIENT understands that construction observation is conducted to reduce – not eliminate – the risk of problems arising during construction and that provision of the service does not create a warranty or guarantee of any type. In all cases, contractors shall retain responsibility for the quality and completeness of their work and for adhering to the plans, specifications, and recommendations on which their work is based. Should GEOTECHNOLOGY for any reason not provide construction observation during the implementation of GEOTECHNOLOGY'S plans, specifications, and recommendations, or should CLIENT restrict GEOTECHNOLOGY'S assignment of observation personnel, CLIENT shall, to the fullest extent permitted by law, waive any claim against GEOTECHNOLOGY, and indemnify, defend, and hold GEOTECHNOLOGY and its affiliated companies harmless from any claim or liability for injury or loss arising from field problems allegedly caused by findings, conclusions, recommendations, plans, or specifications developed by GEOTECHNOLOGY.

b. If GEOTECHNOLOGY is retained by CLIENT to provide a site representative for the purpose of monitoring specific portions of construction work or other field activities as set forth in the PROPOSAL, then this paragraph applies. For the specified assignment, GEOTECHNOLOGY will report observations and professional opinions to CLIENT. No action of GEOTECHNOLOGY'S site representative can be construed as altering any AGREEMENT between CLIENT and others. GEOTECHNOLOGY will report to CLIENT observed conditions related to services for which GEOTECHNOLOGY has been retained to perform which, in GEOTECHNOLOGY'S professional opinion, do not conform with plans and specifications. GEOTECHNOLOGY has no right to reject or stop work of any agent of the CLIENT. Such rights are reserved solely for CLIENT. Furthermore, GEOTECHNOLOGY'S presence on site does not in any way guarantee the completion or quality of the work of any party retained by CLIENT to provide field or construction-related services.

c. GEOTECHNOLOGY shall not be required to sign any document, no matter by whom requested, that would result in GEOTECHNOLOGY having to certify, guarantee, or warrant the existence of conditions whose existence GEOTECHNOLOGY cannot ascertain. CLIENT agrees not to make resolution of any dispute with GEOTECHNOLOGY or payment of any amount due to GEOTECHNOLOGY in any way contingent upon GEOTECHNOLOGY signing any such document.

d. The use of the word "certify" or "certification" by a registered professional engineer in the practice of professional engineering constitutes an expression of professional opinion regarding those facts or findings which are the subject of the certification, and does not constitute a warranty or guarantee, either express or implied. The definition and legal effect of any and all certifications shall be limited as stated herein.

e. GEOTECHNOLOGY will strive to perform its construction materials testing services under this AGREEMENT in accordance with generally accepted testing procedures unless other procedures are specifically referenced in the text of the Project plans and/or specifications.

f. GEOTECHNOLOGY will provide materials testing for samples specified by CLIENT or at a frequency specified by CLIENT and/or will collect samples for materials testing or conduct materials testing when contacted by the CLIENT. GEOTECHNOLOGY will provide foundation testing and/or television camera inspections on drilled shafts or piles constructed by and at a frequency specified by CLIENT. Engineering evaluation of the suitability of the number or types of samples is not provided by GEOTECHNOLOGY.

g. Construction materials tests performed by GEOTECHNOLOGY on site are taken intermittently and indicate the general acceptability of materials on a statistical basis. GEOTECHNOLOGY'S tests and observation of materials are not a guarantee of the quality of other parties' work and do not relieve other parties from the responsibility to perform their work in accordance with applicable plans, specifications and requirements.

7 - JOBSITE

a. Unless specifically set forth in the PROPOSAL, GEOTECHNOLOGY will not be responsible for and will not have control or charge of specific means, methods, techniques, sequences or procedures of construction or other field activities selected by any other person or entity, or safety precautions and programs incident thereto. GEOTECHNOLOGY shall be responsible only for its activities and that of its employees on any site. Neither the professional activities nor the presence of GEOTECHNOLOGY or its employees or its subcontractors on a site shall imply that GEOTECHNOLOGY controls the operations of others, nor shall this be construed to be acceptance by GEOTECHNOLOGY of any responsibility for jobsite safety.

b. Unless indicated otherwise in the PROPOSAL, GEOTECHNOLOGY'S services under this AGREEMENT are limited to geotechnical engineering, geophysical surveying, drilling, construction materials testing or deep foundation testing and GEOTECHNOLOGY shall have no responsibility to locate, identify, evaluate, treat or otherwise consider or deal with hazardous materials.

c. CLIENT represents that CLIENT has made a reasonable effort to evaluate if hazardous materials are on or near the project site, and that CLIENT has informed GEOTECHNOLOGY of CLIENT's findings relative to the possible presence of such materials.

d. Hazardous materials may exist at a site where there is no reason to believe they could or should be present. GEOTECHNOLOGY and CLIENT agree that the discovery of unanticipated hazardous materials constitutes a changed condition mandating a renegotiation of the scope of work or termination of services. GEOTECHNOLOGY and CLIENT also agree that the discovery of unanticipated hazardous materials may make it necessary for GEOTECHNOLOGY to take immediate measures to protect health and safety. CLIENT agrees to compensate GEOTECHNOLOGY for measures taken to protect health and safety and/or any equipment decontamination or other costs incidental to the discovery of unanticipated hazardous materials.

e. GEOTECHNOLOGY agrees to notify CLIENT when unanticipated hazardous materials or suspected hazardous materials are encountered. CLIENT agrees to make any disclosures required by law to the appropriate governing agencies. CLIENT also agrees to hold GEOTECHNOLOGY and its affiliated companies harmless for any and all consequences of disclosures made by GEOTECHNOLOGY, which are required by governing law. In the event the project site is not owned by CLIENT, CLIENT recognizes that it is CLIENT's responsibility to inform the property owner of the discovery of unanticipated hazardous materials or suspected hazardous materials.

f. CLIENT will be responsible for ultimate disposal of any samples secured by GEOTECHNOLOGY, which are found to be contaminated.

8 - BILLING AND PAYMENT

a. CLIENT will pay GEOTECHNOLOGY in accordance with the procedures indicated in the PROPOSAL and its attachments. Invoices will be submitted to CLIENT by GEOTECHNOLOGY, and will be due and payable thirty (30) days from the date of the invoice. If CLIENT objects to all or any portion of any invoice, CLIENT will so notify GEOTECHNOLOGY in writing within fourteen (14) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice not in dispute. The absence of written notification described above, shall constitute an unqualified acceptance of the invoice amount due and payable, and waiver by CLIENT of all claims with respect thereto.

b. CLIENT recognizes that late payment of invoices results in extra expenses for GEOTECHNOLOGY. GEOTECHNOLOGY retains the right to assess CLIENT interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of the invoice. In the event undisputed portions of GEOTECHNOLOGY'S invoices are not paid when due, GEOTECHNOLOGY reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this AGREEMENT until all past due amounts have been paid in full.

c. If test results that indicate failure of a material to meet the intended specification require retesting of the material after additional work by parties responsible for that material, the cost of retesting will be invoiced to the CLIENT.

d. GEOTECHNOLOGY may elect to adjust its rates under this AGREEMENT to account for changes in overhead rates and salary adjustments no sooner than one year from the date of this AGREEMENT, and no more often than once per year at the end of each subsequent year.

9 - TERMINATION

a. This AGREEMENT may be terminated by either party seven (7) days after written notice in the event of any breach of any provision of this AGREEMENT or in the event of substantial failure of performance by the other party, or if CLIENT suspends the work for more than three (3) months. Both parties shall have the opportunity to initiate a mutually agreeable remedy for failure of performance within fifteen (15) days after notice of termination. In the event of termination, GEOTECHNOLOGY will be paid for services performed prior to the date of termination plus reasonable termination expenses, including, but not limited to the cost of cleanup, demobilization, completing analyses, records, and reports necessary to document job status at the time of termination.

10 - ALLOCATION OF RISK

10.1 LIMITATION OF LIABILITY

a. GEOTECHNOLOGY and CLIENT have evaluated the risks and rewards associated with this project, including GEOTECHNOLOGY'S fee relative to the risks assumed, and agree to allocate certain of the risks, so, to the fullest extent permitted by law, the total aggregate liability of GEOTECHNOLOGY to CLIENT and third parties granted reliance is limited to the greater of $50,000 or GEOTECHNOLOGY'S fee, for any and all injuries, damages, claims, losses, expenses, or claim expenses (including attorney's fees) arising out of GEOTECHNOLOGY'S services or this agreement regardless of cause or causes. Such causes include, but are not limited to, GEOTECHNOLOGY'S negligence, errors, omissions, strict liability, statutory liability, negligent misrepresentation, breach of contract, breach of warranty, or other acts giving rise to liability based on contract, tort or statute. If CLIENT prefers to have higher limits of liability coverage, GEOTECHNOLOGY agrees, upon receipt of CLIENT'S written request at the time of accepting our PROPOSAL, to increase the limits of liability up to a maximum of $1,000,000.00 at an additional cost of 5 percent of our total fee or $1,000.00, whichever is greater.

b. Neither party shall have any liability to the other party for loss of product, loss of profit, loss of use, or any other indirect, incidental, special or consequential damages incurred by the other party.

10.2 INDEMNIFICATION

a. Subject to the provisions of the Limitation of Liability described in 10.1a. above, CLIENT and GEOTECHNOLOGY each agree to indemnify and hold harmless the other party and the other party's affiliated companies, officers, directors, partners, employees, and representatives, from and against losses, damages, and judgments, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are legally determined to be caused by a negligent act, error, or omission of the indemnifying party or any of the indemnifying party's officers, directors, members, partners, agents, employees, or subconsultants in the performance of services under this AGREEMENT. If claims, losses, damages, and judgments are legally determined to be caused by the joint or concurrent negligence of CLIENT and GEOTECHNOLOGY, they shall be borne by each party in proportion to its negligence.

b. CLIENT shall indemnify and hold harmless GEOTECHNOLOGY, its affiliated companies, agents, subcontractors, directors, officers, and employees, from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses, including reasonable attorney's fees or other loss arising from damage to subterranean structures or utilities which were not identified or located by CLIENT to GEOTECHNOLOGY in advance of our work or the discovery of unanticipated hazardous materials or suspected hazardous materials, including, but not limited to, any costs created by delay of the project and any costs associated with possible reduction of the property's value.

c. For the purposes of this AGREEMENT only, and except as provided under Paragraph 10.2 (a) above regarding the negligent performance of GEOTECHNOLOGY, CLIENT shall reimburse GEOTECHNOLOGY for or otherwise indemnify, defend, and save GEOTECHNOLOGY, its affiliated companies, agents, subcontractors, directors, officers and employees harmless from any and all demands, suits, judgment, expenses, attorney's fees, and losses arising out of or in connection with bodily injury (including death) to persons or damage to property which may arise from the presence or origination of hazardous substances, pollutants, or contaminants on CLIENT'S property, irrespective of whether such materials were generated or introduced before or after execution of this AGREEMENT; provided, however, that nothing hereinabove set forth is intended to shift any responsibility for employee claims that the parties may bear under the Worker's Compensation laws of the state in which the work is to be performed.

d. GEOTECHNOLOGY shall under no circumstances be considered the generator of any hazardous substances, pollutants, or contaminants encountered or handled in the performance of the work. Without contradiction of any assertion by CLIENT or third-party liability as described in Paragraph 10.2 (b) above and for the purposes of this AGREEMENT only, it is agreed that any hazardous materials, pollutants, or contaminants generated or encountered in the performance of the work shall be the responsibility of CLIENT.

11 - CONTINUING AGREEMENT

a. The indemnity obligations and limitations of liabilities established throughout this AGREEMENT, regardless of paragraph number, shall survive the assignment, transfer, expiration or termination of this AGREEMENT.

12 - PREVAILING WAGE AND UNION MEMBERSHIP

a. Unless CLIENT specifically informs GEOTECHNOLOGY in writing or it is specifically identified in our PROPOSAL and/or WORK AUTHORIZATION that prevailing wage regulations or union membership are required for the Project and the Scope of Services identifies it as covered, CLIENT will reimburse, defend, indemnify and hold harmless GEOTECHNOLOGY and its affiliated companies from and against any liability resulting from a subsequent determination that prevailing wage regulations or union membership cover the Project, including all additional costs, fines and attorneys' fees.

13 - THIRD PARTY RELIANCE UPON REPORTS

a. All Documents are prepared solely for use by CLIENT (and Owner, if applicable) and shall not be provided to any other person or entity without GEOTECHNOLOGY'S written consent. CLIENT shall defend, indemnify and hold harmless GEOTECHNOLOGY, its affiliated companies, officers, shareholders and employees, from and against any action or proceeding brought by any person or entity claiming to rely upon information or opinions contained in reports or other documents provided to such person or entity, published, disclosed or referred to without GEOTECHNOLOGY'S written consent.

14 - NON-SOLICITATION OF EMPLOYEES

a. CLIENT recognizes that GEOTECHNOLOGY, as a part of the services covered by this AGREEMENT, may provide one or more of its employees to work with members of CLIENT'S project staff or specifically on a CLIENT'S project. For purposes of this AGREEMENT, an employee of GEOTECHNOLOGY may be a permanent or temporary employee assigned to provide services to CLIENT. CLIENT hereby agrees that CLIENT will not hire, either directly or indirectly, or provide inducement to hire an employee of GEOTECHNOLOGY either as an employee of CLIENT or as an employee of a subcontractor or supplier to CLIENT, such suppliers to include providers of contract labor, during the term of this AGREEMENT and for a period of six months after the termination of this AGREEMENT. Any hiring or inducement to hire any GEOTECHNOLOGY employee during the term of this AGREEMENT and for a period of six months after termination of this AGREEMENT will be subject to a fee equal to 25% of the total fee for services generated by that employee during a nominal 12-month period.

15 - DISPUTES RESOLUTION

a. All claims, disputes, and other matters in controversy between GEOTECHNOLOGY and CLIENT arising out of or in any way related to this AGREEMENT will be submitted to mediation as a condition precedent to litigation. Notwithstanding any other provision of the Agreement, unless prohibited by law, GEOTECHNOLOGY shall have, in addition to any other right or option set forth herein, the right to proceed in creating a lien upon the building or other improvements and upon the real estate on which the building or improvements are situated for the work and labor done and the labor and materials furnished on and to said real estate and to enforce its mechanic's lien pursuant to all rights and remedies available to it under law.

b. If a dispute at law arises from matters related to the services provided under this AGREEMENT and that dispute requires litigation, then:

(1) the claim will be brought and tried in St. Louis County, Missouri and CLIENT waives the right to move the action to any other county or judicial jurisdiction, and

(2) the prevailing party in any arbitration or litigation between GEOTECHNOLOGY and CLIENT shall be entitled to recovery of all reasonable costs incurred, including staff time, court costs, attorneys' fees, expert witness costs, and other claim related expenses. For purposes of this paragraph, a party prevails if (i) the judgment is equal to or in excess of the Plaintiff's last written demand for settlement, the Plaintiff shall also be entitled to recover its costs, expenses and reasonable attorney's fees from Defendant; (ii) the judgment is equal to or less than the Defendant's last written offer of settlement, the Defendant shall be entitled to recover its costs, expenses and reasonable attorney's fees from the Plaintiff; (iii) the judgment is in between the Plaintiff's last written demand for settlement and the Defendant's last offer of settlement, then neither party shall recover any of its costs, expenses or attorney's fees from the other.

16 - GOVERNING LAW AND SURVIVAL

a. The law of the State of Missouri will govern the validity of these TERMS, their interpretation and performance.

b. If any of the provisions contained in this AGREEMENT are held illegal, invalid, or unenforceable, the enforceability of the remaining provisions will not be impaired.

17 - SUCCESSORS AND ASSIGNS

a. This AGREEMENT shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. Neither party may assign its interests herein (unless assignee assumes in writing assignor's obligations hereunder) without the prior written consent of the other party, which consent will not be unreasonably withheld. No assignment shall operate to relieve the assignor of its obligations under the AGREEMENT.

18 - OTHER PROVISIONS

a. It is agreed that this AGREEMENT is entered into by the parties for the sole benefit of the parties to the AGREEMENT, and that nothing in the AGREEMENT shall be construed to create a right or benefit for any third party.

b. Neither party shall hold the other responsible for damages or delay in performance caused by weather and other acts of God, strikes, lockouts, accidents, or other events beyond the reasonable control of the other or the other's employees and agents.

c. The titles used in this AGREEMENT are for general reference only and are not part of the AGREEMENT.

19 - FUTURE SERVICES

a. All future services rendered by GEOTECHNOLOGY at CLIENT'S request for the project described in the PROPOSAL and/or WORK AUTHORIZATION shall be conducted under the terms of this AGREEMENT.

20 - SIGNATURES

a. The parties have read the foregoing, including any attachments thereto, understand completely the terms, and willingly enter into this AGREEMENT that will become effective on the date signed below by CLIENT.

The City of Lakeland

______________________________(Signature)

By: ______________________________(Print Name)

Position: ______________________________

Date: ______________________________

Geotechnology, LLC

______________________________(Signature)

By: John Henson, P.G. (Print Name)

Position: Area Manager - Midwest Region

Date: July 10, 2024

CONTRACT FOR PROFESSIONAL SERVICES

PART I - AGREEMENT

THIS AGREEMENT, entered into by and between the City of Lakeland, a Municipal Corporation, 10001 U.S. Highway 70, Lakeland, Tennessee, hereinafter referred to as the “Owner,” and ____________ herein after referred to as the "Contractor."

WITNESSETH:

WHEREAS, the Owner seeks services with Geotechnology, LLC, dba UES; and,

WHEREAS, the Contractor represents that it is ready, willing, and able to provide the professional services to Owner as required by this Contract; and,

WHEREAS, the Owner desires to retain the Contractor to such services.

NOW, THEREFORE, in consideration of the covenants and conditions set forth herein to be performed, the parties agree as follows:

1. <u>SCOPE OF SERVICES:</u>

Contractor shall perform services in connection with the attached proposal dated July 10, 2024 for geotechnical services for the Oliver Creek Sewer Interceptor project.

2. <u>TIME OF PERFORMANCE:</u>

The contract shall be effective starting July 18, 2024 until September 30, 2024. The services of the Contractor shall be undertaken and completed within a period reasonable for such work as outlined in each task order.

3. <u>COMPENSATION:</u>

In consideration of the performance of services rendered under this Contract, the Contractor shall be compensated for services performed, not to exceed a fee of Fifteen Thousand and Two Hundred Dollars ($15,200).

4. <u>METHOD OF PAYMENT:</u>

Payment will be paid following receipt of an itemized invoice of services rendered in conformance with the Contract, from the Contractor. Contractor shall submit an invoice for payment from the Contractor specifying that he has performed the services rendered under this Contract, in conformance with the Contract, and that he is entitled to receive the amount requested under the terms of the Contract:

5. <u>TERMS AND CONDITIONS:</u>

This Contract is subject to and incorporates the provisions attached hereto as PART II - GENERAL TERMS AND CONDITIONS.

6. <u>EXTENT OF AGREEMENT:</u>

The Contract represents the entire and integrated Contract between the Owner and the Contractor, and supersedes all prior negotiations, representations, or agreements, either written or oral. The Contract may be amended only by written instrument signed by both the Owner and the Contractor.

IN WITNESS WHEREOF, the Owner and the Contractor have executed this Contract as of the date below.

DATED THIS day of , 2024.

APPROVED AS TO FORM:

____

CONTRACTOR:

ATTEST:

By:______________________________ By: ____________________________

Title:____________________________ Title: ___________________________

CITY OF LAKELAND, TENNESSEE
A Municipal Corporation

ATTEST:

Cheyenne Carter	Josh Roman
City Recorder	Mayor

CONTRACT FOR PROFESSIONAL SERVICES

PART II - GENERAL TERMS AND CONDITIONS

1. TERMINATION OF CONTRACT:

The Owner or Consultant may terminate this Contract anytime by providing thirty (30) days written notice to Owner or Consultant of intent to terminate said Contract. In such event, all finished or unfinished documents, data, studies and reports prepared by the Consultant under this Contract shall, at the option of the Owner, become its property, and the Consultant shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents.

Notwithstanding the above, the Consultant shall not be relieved of liability to the Owner through damages sustained by the Owner, by virtue of termination of the Contract by Consultant or any breach of the Contract by the Consultant, and the Owner may withhold any payments to the Consultant for the purpose of setoff until such time as the exact amount of damages due the Owner from the Consultant are determined.

2. CHANGES:

The Owner may, from time to time, request changes in the scope of the services of the Consultant to be performed hereunder. Such changes, including any increase or decrease in the amount of the Consultant's compensation, which are mutually agreed upon between the Owner and the Consultant, shall be incorporated in written amendments to this Contract. There shall be no increase in the amount of Consultant's compensation, as set forth above, unless approved by Resolution adopted by Owner.

3. ASSIGNABILITY:

The Consultant shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without the prior written approval of the Owner: provided, however, that claims for money due or to become due the Consultant from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a trustee in bankruptcy, without such approval. Notice of any assignment or transfer shall be furnished to the Owner.

4. AUDIT:

The Owner or any of its duly authorized representatives shall have access to any books, documents, papers, and records of the Consultant which are directly pertinent to the specific contracted Project for the purpose of making audit, examination, excerpts, and transactions.

5. EQUAL EMPLOYMENT OPPORTUNITY:

In carrying out the program, the Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, or disability. The Consultant shall take affirmative action to insure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, or disability. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Consultant shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the government setting forth the provisions of this nondiscrimination clause. The Consultant shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, or disability.

6. OWNER OF PROJECT MATERIALS:

It is agreed that all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, films, duplicating plates, and reports prepared by the Consultant under this Contract shall be considered the property of the Owner, and upon completion of the services to be performed, they will be turned over to the Owner provided that, in any case, the Consultant may, at no additional expense to the Owner, make and retain such additional copies thereof as Consultant desires for its own use; and provided further, that in no event may any of the documents, data, studies, surveys, drawings, maps, models, photographs, films, duplicating plates, or other reports retained by the Consultant be released to any person, agency, corporation, or organization without the written consent of the Owner. Except as required law, regulation, or court order, provided that the Consultant shall give prompt notice to the Owner to enable them to seek a protective order or take other appropriate action.

7. FINDINGS CONFIDENTIAL:

All reports, information, data, etc., given to, or prepared or assembled by the Consultant under this Contract, shall be deemed confidential and none shall be made available to any individual or organization by the Consultant without the prior written consent of the Owner. Except as required law, regulation, or court order, provided that the Consultant shall give prompt notice to the Owner to enable them to seek a protective order or take other appropriate action.

8. GOVERNING LAW:

This Contract has been executed by the parties hereto on the day and year first above written and shall be governed by the laws of the State of Tennessee. The Consultant shall also comply with all applicable laws, ordinances, and codes of the Federal, State, or local governments and shall not trespass on any public or private property in performing any of the work embraced by this Contract.

9. PERSONNEL:

The Consultant represents that it has, or will secure, all personnel required in performing the services under this Contract. Such personnel shall not be employees of the City of Lakeland. All of the services required hereunder shall be performed by the Consultant, or under its supervision, and all personnel engaged in the work shall be fully qualified. All personnel employed by Consultant shall be employed in conformity with applicable State or Federal laws.

10. SUBCONSULTANT:

The Consultant shall not employ any Subconsultant to perform any services in the scope of this Project, unless said Subconsultant is approved in writing by the Owner. Said Subconsultant shall be paid by the Consultant.

11. INSURANCE:

Prior to commencement of work, Consultant shall procure, and at all times thereafter maintain, with insurer acceptable to the Owner, the following minimum insurance protecting the Consultant and Owner against liability from damages because of injuries, including death suffered by persons, including employees of the Owner, and liability from damages to property arising from and growing out of the Consultant's negligent operations in connection with the performance of this contract.

		LIMITS
A.	Worker's Compensation	Statutory
B.	Comprehensive General Liability Premises/Operations Products/Completed Operations Contractual Liability	$500,000 Per occurrence
C.	Professional Liability/Errors and Omissions	$500,000

Consultant shall provide Owner with certificates evidencing such insurance as outlined above prior to beginning any work under this agreement. Such certificates shall provide the thirty (30) days advance written notice to Owner of cancellation, material change, reduction of coverage, or non-renewal, and shall list the City of Lakeland as an additional insured.

In addition, Consultant shall provide Owner with copies of insurance policies and/or policy endorsements listing the City of Lakeland as an additional insured. City's failure to request or review such insurance certificates or policies shall not affect City's rights or Consultant's obligations hereunder.

Consultant agrees to forever indemnify the City and hold it harmless from all liability for damage to property or injury to or death to persons, including all costs, expenses, and attorney's fees incurred related thereto, arising from negligence of the Consultant.

12. INTENT:

Consultant represents that it has read and agrees to the terms of this Contract and further agrees that it is the intent of the parties hereto that Consultant shall perform all of the services to be provided hereunder for the compensation set forth hereinabove. Consultant also agrees that it is the specific intent of the parties hereto, and a material condition of this Contract, that it shall not be entitled to compensation for other services rendered unless specifically authorized by the Owner by Resolution of its governing body. Consultant agrees that it has made a careful examination of the services to be rendered hereunder, and that the Contract price set forth hereinabove is adequate compensation for all the services to be rendered under the terms of this Contract.

13. GOVERNMENTAL CLAIMS ACT:

The City does not waive any right or rights it may have pursuant to the Tennessee Governmental Claims Act, Tennessee Statute Sections 29-20-101, et seq. The City specifically reserves the right to assert any and all immunities, rights and defenses it may have pursuant to the Tennessee Governmental Claims Act.

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - approving Change Order #1 with Barge Design Solutions for the Fiscal Year 2024 Lakeland Athletic Complex Phase II design and engineering.

Staff Contact: Andrew Fisher, Parks and Recreation Director

STAFF RECOMMENDATION
City Staff recommends the Board of Commissioners approve resolution R-90-2024.

BUDGET IMPACT
Funds for this Change Order are allocated in the Fiscal Year 2024 budget designated for the design and engineering of the Lakeland Athletic Complex Phase II.

DISCUSSION
This Change Order covers expenses incurred by Barge Design Solution from changes requested by City Staff to have the Lakeland Athletic Complex Phase II design and engineering broken out into three sub-phases.

RESOLUTION R-90-2024

APPROVING HANGE ORDER #1 WITH BARGE DESIGN SOLUTIONS FOR THE FISCAL YEAR 2024 LAKELAND ATHLETIC COMPLEX PHASE II DESIGN AND ENGINEERING

WHEREAS, Barge Design Solutions is under contract for the FY24 Lakeland Athletic Complex Phase II Design and engineering; and,

WHEREAS, the City of Lakeland desired to explore the option of dividing the Lakeland Athletic Complex Phase II into three separate sub-phases; and,

WHEREAS, funding for this change order is appropriated in the Fiscal Year 2024 Annual Budget for the Lakeland Athletic Complex Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Manager is hereby authorized and directed to execute Change Order #1 with Barge Design Solutions for the FY24 Lakeland Athletic Complex Phase II Design and engineering.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 18TH day of July 2024, the public welfare requiring it.

ATTEST:

____________________	____________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

BARGE
DESIGN SOLUTIONS

July 2, 2024

VIA Email

Mr. Andrew Fisher
City of Lakeland
10001 Highway 70
Lakeland, TN 38002

RE: Lakeland Athletic Fields, Phase II

Dear Mr. Fisher,

Barge Design Solutions, Inc. (Barge) is providing a change order request to supplement the existing Agreement for Professional Services, fully executed on July 13, 2022, for additional services provided beyond the original scope.

Please review the attached change order for a description of the additional tasks. To provide some background, most of the requested fee resulted from an interest in the potential phasing of the project. Also, although not specifically listed in the change order, extended coordination for Phase I lighting was included in the fee. Lastly, the extended project schedule resulted from a combination of TDEC's requirement that we research on-site alternative design to avoid wetland impacts and the City's reprioritization of projects when the Athletic Fields became less practical to fund completely.

If you have any comments or questions regarding the inclusions in the change order, please advise me by calling 901.244.5517.

If you are in agreement with the proposed Change Order 001, please forward a signed copy of the attached document. We appreciate you and the work we do together.

Sincerely,

Barge Design Solutions, Inc.

Russell G. Brasfield

Russ Brasfield, PE

Project Manager

Copy: file

Barge project #3695303

65 GERMANTOWN COURT // SUITE 100 // MEMPHIS // TENNESSEE // 38018 // (901) 755-7166 // BARGEDESIGN.COM

CHANGE ORDER

7/2/2024 Change Order Number 001

Client:
City of Lakeland
10001 Highway 70
Lakeland, TN 38002

ATTN: Andrew Fisher

RE: Lakeland Athletic Fields, Phase II
3695303

Location: Lakeland, TN

The following change of scope item is requested for the identified project. Delivery of services for this change order will be governed under the existing Agreement for Professional Services between Barge Design Solutions, Inc. and City of Lakeland fully executed 7/13/2022. Except as otherwise expressly provided in this Change Order, all terms, conditions, agreements, and understandings contained in such Professional Services Agreement shall remain unchanged and in full force and effect.

Description of change of scope items:

Phased construction research – To explore the potential of building the project in multiple phases, Barge reviewed estimated construction costs in various arrangements of construction activities. Practical design, building cost implication, general feasibility, and construction sequence was considered and discussed with the City. A full determination of phasing may be made at a later date, whenever the City is prepared to continue the project.

Extended project schedule – The overall schedule was extended, resulting in additional effort beyond the original scope of work.

The specific items described above were excluded from the original contract and have resulted in an incurred fee of $15,000. Coordination, management, and documentation for each task is included within the overall fee.

**** The entirety of this work was requested and completed in fiscal year 2024.**

Original Contract Value:	**$ 320,000.00**
Change Order Number 001:	**$ 15,000.00**
New Total Contract Value	**$ 335,000.00**

CHANGE ORDER

If the above change of scope item meets your approval, please sign below and return original to our office. Please retain a copy for your records.

Sincerely,

Accepted by:

____
Authorized Signature

____
Date

Russ Brasfield
Project Manager
Barge Design Solutions, Inc.
65 Germantown Court, Suite 100, Memphis, TN 38018
901-755-7166

Copy to: file

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - approving an agreement with the Tennessee Department of Transportation for Seed Tick Road Roundabout.

Staff Contact: Luis Camarillo Hernandez, Staff Engineer

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve Resolution R-91-2024

BUDGET IMPACT

This expenditure is budgeted in the Fiscal Year 2025 Annual Budget for the General Funds.

DISCUSSION

The Seed Tck Road Roundabout project proposes to add a single lane roundabout to replace the 4-way stop controlled intersection of Seed Tick Road and Memphis Arlington Road. The city was awarded funds from the Surface Transportation Block Grant ("STBG") and the Carbon Reduction Program ("CRP") through the Memphis Metropolitan Planning Organization for the design of this roundabout. Upon completion of design, the City will apply for grant funds to cover the construction cost.

RESOLUTION R-91-2024

APPROVING AN AGREEMENT WITH THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR SEED TICK ROAD ROUNDABOUT

WHEREAS, the City desires to add a roundabout to the intersection of Seed Tick Road and Memphis Arlington Road; and,

WHEREAS, The City is a recipient of a Surface Transportation Block Grant and Carbon Reduction Program in the amount of two hundred and forty thousand dollars ($240,000) for the design of the Seed Tick Road Roundabout; and,

WHEREAS, The City is required to provide a (20%) local match in the amount of forty eight thousand dollars ($48,000); and,

WHEREAS, funding is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland Tennessee, that the Mayor is hereby authorized and directed to execute, and the City Attorney to attest, an agreement with the Tennessee Department of Transportation for Seed Tick Road Roundabout.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee on this 18th day of July 2024, the public welfare requiring it.

ATTEST:

____________________________	____________________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

STATE OF TENNESSEE
DEPARTMENT OF TRANSPORTATION
LOCAL PROGRAMS & COMMUNITY INVESTMENTS DIVISION
SUITE 1000, JAMES K. POLK BUILDING
505 DEADERICK STREET
NASHVILLE, TENNESSEE 37243-1402
(615) 741-2208

BUTCH ELEY
DEPUTY GOVERNOR &
COMMISSIONER OF TRANSPORTATION

BILL LEE
GOVERNOR

July 10, 2024

The Honorable Josh Roman
Mayor, City of Lakeland
10001 Highway 70
Lakeland, TN 38002

Re: Seed Tick Road Roundabout
Lakeland, Shelby County
PIN:134743.00
Federal Project Number: STP-M-5429(11)
State Project Number: 79LPLM-F3-794
Contract Number: 240268

Dear Mayor Roman*:*

I am attaching a contract providing for the development of the referenced project. Please review the contract and advise me if it requires further explanation. If you find the contract satisfactory, please execute it in accordance with all rules, regulations, and laws. Adobe Sign will then forward the document for the signature of the attorney for your agency. Once the contract is fully executed Adobe Sign will send you a link to the download the contract for your files.

If you have any questions or need any additional information, please contact Erich Moody at 615-253-4896 or erich.moody@tn.gov.

Sincerely,

Chasity M. Bell

Chasity M. Bell
Transportation Manager 1

Attachment

Agreement Number: 240268

Project Identification Number: 134743.00

Federal Project Number: STP-M-5429(11)

State Project Number: 79LPLM-F3-794

State of Tennessee Department of Transportation

LOCAL AGENCY PROJECT AGREEMENT

THIS AGREEMENT, made and entered into this ___________ day of __________, 20___ by and between the STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION, an agency of the State of Tennessee (hereinafter called the "Department") and the CITY OF LAKELAND (hereinafter called the "Agency") for the purpose of providing an understanding between the parties of their respective obligations related to the management of the project described as:

Seed Tick Road Roundabout

A. PURPOSE OF AGREEMENT

A.1 Purpose:

a) The purpose of this Agreement is to provide for the Department's participation in the project as further described in Exhibit A attached hereto and by this reference made a part hereof (hereinafter called the "Project") and state the terms and conditions as to the manner in which the Project will be undertaken and completed.

A.2 Modifications and Additions:

a) Exhibit(s) are attached hereto and by this reference made a part hereof.

B. ACCOMPLISHMENT OF PROJECT

B.1 General Requirements:

a)

	Responsible Party	Funding Provided by Agency or Project.
Environmental Clearance by:	**Agency**	**Project**
Preliminary Engineering by:	**Agency**	**Project**
Right-of-Way by:	**Agency**	**Project**

Utility Coordination by:	**Agency**	**Project**
Construction by:	**Agency**	**Project**

b) After receiving authorization for a phase, the Agency shall commence and complete the phases as assigned above of the Project as described in Exhibit A with all practical dispatch, in a sound, economical, and efficient manner, and in accordance with the provisions herein, and all applicable laws. The Project will be performed in accordance with all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines, available in electronic format, which by this reference is made a part hereof as if fully set forth herein.

c) A full time employee of the Agency shall supervise the herein described phases of the Project. Said full time employee of the Agency shall be qualified to and shall ensure that the Project will be performed in accordance with the terms of this Agreement and all latest applicable Department procedures, guidelines, manuals, standards, and directives as described in the Department's Local Government Guidelines and this Agreement.

B.2 Completion Date:

a) This Agreement shall be effective from the period beginning on the fully executed date, and ending **five (5) years from the fully executed date**. The Agency shall provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed to the Construction Phase by **three (3) years from the fully executed date**. If the Agency does not provide the Department with the documents, certifications and clearances necessary to obtain the Department's Notice to Proceed to the Construction Phase by the aforesaid date, then the Department may terminate this Agreement. If the Agency does not complete the herein described phases of the Project within the time period, this Agreement will expire on the last day of scheduled completion as provided in this paragraph unless an extension of the time period is requested by the Agency and granted in writing by the Department prior to the expiration of the Agreement. An extension of the term of this Agreement will be effected through an amendment to the Agreement. The Agency hereby acknowledges and affirms that the Department shall have no obligation for Agency services or expenditures that were not completed within this specified contract period.

B.3 Environmental Regulations:

a) The Department will review environmental documents and require any appropriate changes for approval as described in the Department's Local Government Guidelines.

b) In the event the Agency is made responsible for the Environmental Clearances in Section B.1(a) of this Agreement, the Agency will be solely responsible for compliance with all applicable environmental regulations and for any liability arising from non-compliance with these regulations and will reimburse the Department of any loss incurred in connection therewith to the extent permitted by Tennessee Law. The Agency will be responsible for securing any applicable permits as described in the Department's Local Government Guidelines.

c) In the event the Agency is made responsible for the Environmental Clearances in section B.1.(a) of this Agreement, then the Agency must complete environmental clearances before it begins final design and understands that a separate Notice to Proceed will be submitted for final design. Any work on final design performed ahead of this Notice to Proceed will not be reimbursable.

B.4 Plans and Specifications

a) In the event that the Agency is made responsible for the Preliminary Engineering in Section B.1.(a) of this Agreement and federal and/or state funding is providing reimbursement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Preliminary Engineering phase of the Project without the written approval of the Department. Failure to obtain such written approval shall be sufficient cause for nonpayment by the Department.

b) In the event that this Agreement involves constructing and equipping of facilities on the State Highway System and/or is a Project with Federal participation and the Agency is made responsible for Preliminary Engineering in section B.1.(a) of this Agreement, the Agency shall submit to the Department for approval all appropriate plans and specifications covering the Project. The Department will review all plans and specifications and will issue to the Agency written approval with any approved portions of the Project and comments or recommendations covering any remainder of the Project deemed appropriate.

   1) After resolution of these comments and recommendations to the Department's satisfaction, the Department will issue to the Agency written approval and authorization to proceed with the next assigned phase of the Project. Failure to obtain this written approval and authorization to proceed shall be sufficient cause for nonpayment by the Department.

c) In the event that this Agreement involves the use of State Highway Right-of-Way, the Agency shall submit a set of plans to the TDOT Traffic Engineer responsible for the land in question. These plans shall be sufficient to establish the proposed Project and its impact on the State Highway Right-of-Way.

B.5 Right-of-Way

a) The Agency shall, without cost to the Department, provide all land owned by the Agency or by any of its instrumentalities as may be required for the Project right-of-way or easement purposes.

b) The Agency understands that if it is made responsible for the Right-of-Way phase in section B.1(a) hereof and federal and/or state funds are providing the reimbursement, any activities initiated for the appraisal or the acquisition of land prior to authorization from the Department will not be reimbursed and that failure to follow applicable Federal and State law in this regard may make the Project ineligible for federal and/or state funding.

c) The Department will review the processes the Agency used for the acquisition of land and other right-of-way activities. If those processes are found to be in accordance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Public Law 91-646, 84 Stat. 1894), the Department will certify that the acquisition phase was completed appropriately. The Agency understands that the Project cannot proceed to the Construction phase until this certification of the acquisition phase has been provided. It further understands that if the processes used for acquisition are such that certification is impossible, federal and/or state funds will be withdrawn from the Project. If such withdrawal does occur, the Agency hereby agrees to reimburse the Department for all federal and/or state funds expended at the time of such withdrawal.

d) If the Agency is responsible for the Construction phase, it agrees to correct any damage or disturbance caused by its work within the State Highway Right-of-Way, including but not limited to the replacement of any control access fence removed by the Agency or its Contractor or agent during the Construction phase of the Project.

B.6 Approval of the Construction Phase

a) In the event that the Agency is made responsible for the Construction phase in section B.1.(a) of this Agreement, except as otherwise authorized in writing by the Department, the Agency shall not execute an agreement for the Construction phase of the Project without the written approval of the Department. Failure to obtain such approval shall be sufficient cause for nonpayment by the Department.

b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement, when the construction phase begins, the Agency may make such periodic visits to the Project site as necessary to familiarize itself generally with the progress and quality of the work and to determine in general if the work is proceeding in accordance with the Construction Agreement. If there is any perceived failure, the Agency shall give prompt written notification to the Department's Resident Engineer in charge.

c) If the Project includes State Highway Right-of-Way and the Agency is responsible for the Construction phase, the Agency shall follow all requirements imposed by the TDOT Traffic Engineer.

d) In the event that the Project includes State Highway Right-of-Way and the Agency is performing any construction work on this project, such work shall be performed to the satisfaction of the Department. If the Agency is being compensated for any construction work under this Agreement, any remedial work deemed necessary by the Department shall be done at the Agency's sole expense.

e) The Agency understands that all contractors allowed to bid hereunder must be included on the Department's pre-qualified contractor list. Under Federal law, however, no contractor shall be required by law, regulation, or practice to obtain a license before submitting a bid or before a bid may be considered for an award of a contract; provided, however, that this is not intended to preclude requirements for the licensing of a contractor upon or subsequent to the award of the contract if such requirements are consistent with competitive bidding.

B.7 Detours

a) If the Agency deems a detour to be necessary to maintain traffic during a road closure, then the Agency shall select, sign, and maintain the detour route in strict accordance with the Departments Final Construction Plan Notes and the Manual on Uniform Traffic Control Devices.

B.8 Utilities

a) In the event that the Department is made responsible for the Construction phase in Section B.1(a) of this Agreement, the Department shall also be responsible for the Utilities phase.

b) In the event that the Agency is made responsible for the Utilities Phase in section B.1.(a) of this Agreement, the following applies:

1) The Agency shall assist and ensure that all utility relocation plans are submitted by the utilities and received by the Regional TDOT Utility Office per TDOT's coordination instructions for approval prior to the Project advertisement for bids.

2) The Agency agrees to provide for and have accomplished all utility connections within the right-of-way and easements prior to the paving stage of the Construction phase.

B.9 Railroad

a) In the event that a railroad is involved, Project costs may be increased by federally required improvements. The Agency agrees to provide such services as necessary to realize these improvements. The Agency understands it may have to enter into additional agreements to accomplish these improvements.

C. PAYMENT TERMS AND CONDITIONS

C.1 Total Cost:

In the event that the Agency shall receive reimbursement for Project expenditures with federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Department agrees to reimburse the Agency for eligible and appropriate Project expenditures as detailed in the Department's Local Government Guidelines with federal and/or state funds made available and anticipated to become available to the Agency, provided that the maximum liability of the Department shall be as set forth in Exhibit A.

C.2 Eligible Costs:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) Only Project costs incurred after the issuance of the Notice to Proceed for each phase as detailed in the Department's Local Government Guidelines are eligible for Department reimbursement.

C.3 Limits on Federal and State Participation:

a) Federal and/or state funds shall not participate in any cost which is not incurred in conformity with applicable federal and state law, the regulations in 23 C.F.R. and 49 C.F.R., and policies and procedures prescribed by the Federal Highway Administration (FHWA). Federal funds shall not be paid on account of any cost incurred prior to authorization by the FHWA to the Department to proceed with the Project or part thereof involving such cost. (23 CFR 1.9 (a)). If FHWA and/or the Department determines that any amount claimed is not eligible, federal and/or state participation may be approved in the amount determined to be adequately supported. The Department shall notify the Agency in writing citing the reasons why items and amounts are not eligible for federal and/or state participation. Where correctable non-compliance with provisions of law or FHWA requirements exists, federal and/or state funds may be withheld until compliance is obtained. Where non-compliance is not correctable, FHWA and/or the Department may deny participation in Project costs in part or in total.

b) For any amounts determined to be ineligible for federal and/or state reimbursement for which the Department has made payment, the Agency shall promptly reimburse the Department for all such amounts within ninety (90) days of written notice.

c) The Agency agrees to pay all costs of any part of this project which are not eligible for federal and/or state funding. These funds shall be provided upon written request therefore by either (a) check, or (b) deposit to the Local Government Investment Pool, whenever requested.

C.4 Payment Methodology:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Agency shall submit invoices, in a form outlined in the Local Government Guidelines with all necessary supporting documentation, prior to any reimbursement of allowable costs. Such invoices shall be submitted no more often than monthly but at least quarterly and indicate, at a minimum, the amount charged by allowable cost line-item for the period invoiced, the amount charged by line-item to date, the total amounts charged for the period invoiced, and the total amount charged under this agreement to date. Each invoice shall be accompanied by proof of payment in the form of a canceled check or other means acceptable to the Department.

b) The payment of an invoice by the Department shall not prejudice the Department's right to object to or question any invoice or matter in relation thereto. Such payment by the Department shall neither be construed as acceptance of any part of the work or service provided nor as final approval of any of the costs invoiced therein. The Agency's invoice shall be subject to reduction for amounts included in any invoice or payment theretofore made which are determined by the Department not to constitute allowable costs. Any payment may be reduced for overpayments or increased for under-payments on subsequent invoices.

c) Should a dispute arise concerning payments due and owing to the Agency under this Agreement, the Department reserves the right to withhold said disputed amounts pending final resolution of the dispute.

C.5 The Department's Obligations:

In the event that the Department is managing all phases of the Project herein described, this provision C.5 does not apply.

a) Subject to other provisions hereof, the Department will honor requests for reimbursement to the Agency in amounts and at times deemed by the Department to be proper to ensure the carrying out of the Project and payment of the eligible costs. However, notwithstanding any other provision of this Agreement, the Department may elect not to make a payment if:

1) **Misrepresentation:**
The Agency shall have made misrepresentation of a material nature in its application, or any supplement thereto or amendment thereof, or in or with respect to any document or data furnished therewith or pursuant hereto;

2) **Litigation:**
There is then pending litigation with respect to the performance by the Agency of any of its duties or obligations which may jeopardize or adversely affect the Project, this Agreement or payments to the Project;

3) **Approval by Department:**
The Agency shall have taken any action pertaining to the Project, which under this Agreement requires the approval of the Department or has made related expenditure or incurred related obligations without having been advised by the Department that same are approved;

4) **Conflict of Interests:**
There has been any violation of the conflict of interest provisions contained herein in D.16; or

5) **Default:**
The Agency has been determined by the Department to be in default under any of the provisions of the Agreement.

C.6 Final Invoices:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) The Agency must submit the final invoice on the Project to the Department within one hundred twenty (120) days after the completion of the Project. Invoices submitted after the one hundred twenty (120) day time period may not be paid.

C.7 Offset:

In the event that the Agency shall receive federal and/or state funds for any portion of the herein described Project, this provision shall apply.

a) If, after Project completion, any claim is made by the Department resulting from an audit or for work or services performed pursuant to this Agreement, the Department may offset such amount from payments due for work or services done under any agreement which it has with the Agency owing such amount if, upon demand, payment of the amount is not made within sixty (60) days to the Department.

Offsetting any amount pursuant to this section shall not be considered a breach of agreement by the Department.

C.8 Travel Compensation

a) If the Project provided for herein includes travel compensation, reimbursement to the Agency for travel, meals, or lodging shall be subject to amounts and limitations specified in the "State Comprehensive Travel Regulations," as they are amended from time to time and subject to the Agreement Budget.

D. STANDARD TERMS AND CONDITIONS

D.1 Governing Law:

a) This Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee. The Agency agrees that it will be subject to the exclusive jurisdiction of the courts of the State of Tennessee in actions that may arise under this Agreement. The Agency acknowledges and agrees that any rights or claims against the State of Tennessee or its employees hereunder, and any remedies arising therefrom, shall be subject to and limited to those rights and remedies, if any, available under Tennessee Code Annotated, Sections 9-8-101 through 9-8-407.

D.2 General Compliance with Federal, State, and Local Law:

a) The Agency is assumed to be familiar with and observe and comply with those Federal, State, and local laws, ordinances, and regulations in any manner affecting the conduct of the work and those instructions and prohibitive orders issued by the State and Federal Government regarding fortifications, military and naval establishments and other areas. The Agency shall observe and comply with those laws, ordinances, regulations, instructions, and orders in effect as of the date of this Agreement.

b) The parties hereby agree that failure of the Agency to comply with this provision shall constitute a material breach of this Agreement and subject the Agency to the repayment of all damages suffered by the State and/or the Department as a result of said breach.

D.3 State Law:

a) Nothing in the Agreement shall require the Agency to observe or enforce compliance with any provision thereof, perform any other act or do any other thing in contravention of any applicable state law, provided, that if any of the provisions of the Agreement violate any applicable state law, the Agency will at once notify the Department in writing in order that appropriate changes and modifications may be made by the Department and the Agency to the end that the Agency may proceed as soon as possible with the Project.

D.4 Submission of the Proceedings, Agreements, and Other Documents:

a) The Agency shall submit to the Department such data, reports, records, agreements, and other documents relating to the Project as the Department and the Federal Highway Administration may require.

D.5 Appropriations of Funds:

a) This Agreement is subject to the appropriation and availability of State and/or Federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the Department reserves the right to terminate the Agreement upon thirty (30) days written notice to the Agency. Said termination shall not be deemed a breach of agreement by the Department. Upon receipt of the written notice, the Agency shall cease all work associated with the Agreement. Should such an event occur, the Agency shall be entitled to compensation for all satisfactory and authorized services completed as of the termination date. Upon such termination, the Agency shall have no right to recover from the Department any actual, general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.6 Rights and Remedies Not Waived:

a) In no event shall the making by the Department of any payment to the Agency constitute or be construed as a waiver by the Department of any breach of covenant or any default which may then exist on the part of the Agency and the making of such payment by the Department, while any such breach or default shall exist, shall in no way impair or prejudice any right or remedy available to the Department with respect to such breach or default.

b) Nothing in this agreement shall be construed to limit the Department's right at any time to enter upon its highway right-of-way, including the area occupied by the Project, for the purpose of maintaining or reconstructing its highway facilities.

D.7 Department and Agency Not Obligated to Third Parties:

a) The Department and Agency shall not be obligated hereunder to any party other than the parties to this Agreement.

D.8 Independent Contractor:

a) The parties hereto, in the performance of this Agreement, shall not act as agents, employees, partners, joint ventures, or associates of one another. It is expressly acknowledged by the parties hereto that such parties are independent contracting entities and that nothing in this Agreement shall be construed to create a principal/agent relationship or to allow either to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purpose whatsoever.

b) The Agency, being a political subdivision of the State, is governed by the provisions of the Tennessee Government Tort Liability Act, Tennessee Code Annotated, Sections 29-20-101, et seq, and all other applicable laws.

D.9 Maintenance:

a) Nothing contained herein shall be construed as changing the maintenance responsibility of either party for any part of the referenced project that lies on its system of highways. If the project funded hereunder results in the installation of any traffic signal, lighting or other electrically operated device(s), then the Agency shall be solely responsible for and pay all costs associated with maintenance and operation of all electrically operated devices together with the related equipment, wiring and other necessary appurtenances, and the Agency shall furnish electrical current to all such devices which may be installed as part of the project. Additionally, the Agency shall be solely responsible for and pay all costs associated with the maintenance and operation of solar-powered devices, including, but not limited to, replacement of solar panels, batteries, lights and lenses.

b) In the event that the Department is made responsible for the Construction phase in section B.1.(a) of this Agreement and to the extent that the Department is responsible for accomplishing the construction of the project, the Department will notify the Agency when Construction phase of the project has been completed; provided however, that failure to notify the Agency shall not relieve the Agency of its maintenance responsibilities.

D.10 Disadvantaged Business Enterprise (DBE) Policy and Obligation:

In the event that the herein-described project is funded with federal funds, the following shall apply:

a) **DBE Policy:**
It is the policy of the Department that Disadvantaged Business Enterprises, as defined in 49 C.F.R., Part 26, as amended, shall have the opportunity to participate in the performance of agreements financed in whole or in part with Department funds under this Agreement. The DBE requirements of applicable federal and state regulations apply to this Agreement; including but not limited to project goals and good faith effort requirements.

b) **DBE Obligation:**
The Agency and its Contractors agree to ensure that Disadvantaged Business

Enterprises, as defined in applicable federal and state regulations, have the opportunity to participate in the performance of agreements and this Agreement. In this regard, all recipients and Contractors shall take all necessary and reasonable steps in accordance with applicable federal and state regulations, to ensure that the Disadvantaged Business Enterprises have the opportunity to compete for and perform agreements. The Agency shall not discriminate on the basis of race, color, national origin or sex in the award and performance of Department-assisted agreements.

D.11 Tennessee Department of Transportation Debarment and Suspension:

a) In accordance with the Tennessee Department of Transportation regulations governing Contractor Debarment and Suspension, Chapter 1680-5-1, the Agency shall not permit any suspended, debarred or excluded business organizations or individual persons appearing on the Tennessee Department of Transportation Excluded Parties List to participate or act as a principal of any participant in any covered transaction related to this Project. Covered transactions include submitting a bid or proposal, entering into an agreement, or participating at any level as a subContractor.

D.12 Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion (applies to federal aid projects):

a) **Instructions for Certification - Primary Covered Transactions:**

By signing and submitting this Agreement, the Agency is providing the certification set out below.

1) The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The Agency shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the Department's determination whether to enter into this transaction. However, failure of the Agency to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

2) The certification in this clause is a material representation of fact upon which reliance was placed when the Department determined to enter into this transaction. If it is later determined that the Agency knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

3) The Agency shall provide immediate written notice to the Department if at any time the Agency learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4) The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the Department for assistance in obtaining a copy of those regulations.

5) The Agency agrees by entering into this Agreement that it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the Department.

6) The Agency further agrees by entering into this Agreement that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the Department, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7) An Agency may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-procurement portion of the "Lists of Parties Excluded From Federal Procurement or Non-procurement Programs" (Non-procurement List) which is compiled by the General Services Administration.

8) Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9) Except for transactions authorized under these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the Department may terminate this transaction for cause or default.

b) Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions:

The prospective participant in a covered transaction certifies to the best of its knowledge and belief, that it and its principals:

1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal, State or local department or agency;

2) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or agreement under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in this certification; and

4) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

5) Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

D.13 Equal Employment Opportunity:

a) In connection with the performance of any Project, the Agency shall not discriminate against any employee or applicant for employment because of race, age, religion, color, sex, national origin, disability or marital status. The Agency will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, age, religion, color, gender, national origin, disability or marital status. Such action shall include, but not be limited to, the following: employment upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

b) The Agency shall insert the foregoing provision in all agreements modified only to show the particular contractual relationship in all its agreements in connection with the development of operation of the Project, except agreements for the standard commercial supplies or raw materials, and shall require all such Contractors to insert a similar provision in all subcontracts, except subcontracts for standard commercial supplies or raw materials. When the Project involves installation, construction, demolition, removal, site improvement, or similar work, the Agency shall post, in conspicuous places available to employees and applicants for employment for

Project work, notices to be provided by the Department setting forth the provisions of the nondiscrimination clause.

D.14 Title VI – Civil Rights Act of 1964:

a) The Agency shall comply with all the requirements imposed by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), 49 C.F.R., Part 21, and related statutes and regulations. The Agency shall include provisions in all agreements with third parties that ensure compliance with Title VI of the Civil Rights Act of 1964, 49 C.F.R., Part 21, and related statutes and regulations.

D.15 Americans with Disabilities Act of 1990 (ADA):

a) The Agency will comply with all the requirements as imposed by the ADA and the regulations of the federal government issued thereunder.

D.16 Conflicts of Interest:

a) The Agency warrants that no amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement.

b) The Agency shall insert in all agreements entered into in connection with the Project or any property included or planned to be included in any Project, and shall require its Contractors to insert in each of it's subcontracts, the following provision:

1) "No amount shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subContractor, or consultant to the Agency in connection with any work contemplated or performed relative to this Agreement."

D.17 Interest of Members of or Delegates to, Congress (applies to federal aid projects):

a) No member of or delegate to the Congress of the United States shall be admitted to any share or part of the Agreement or any benefit arising therefrom.

D.18 Restrictions on Lobbying (applies to federal aid projects):

The Agency certifies, to the best of its knowledge and belief, that:

a) No federally appropriated funds have been paid or will be paid, by or on behalf of the Agency, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress in connection with the awarding of any federal agreement, the making of any federal grant, the making of any federal loan, and entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal agreement, grant, loan, or cooperative agreement.

b) If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this grant, loan, or cooperative agreement, the Agency shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

c) The Agency shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including sub-grants, subcontracts, and agreements under grants, loans, and cooperative agreements) and that all sub-recipients of federally appropriated funds shall certify and disclose accordingly.

D.19 Records:

a) The Agency shall maintain documentation for all charges against the Department under this Agreement. All costs charged to the Project, including any approved services contributed by the Agency or others, shall be supported by properly executed payrolls, time records, invoices, agreements or vouchers evidencing in proper detail and in a form acceptable to the Department the nature and propriety of the charges. The books, records, and documents of the Agency, insofar as they relate to work performed or money received under this Agreement, shall be maintained and made available upon request to the Department at all times during the period of this Agreement and for at least three (3) years after final payment is made.

b) Copies of these documents and records shall be furnished to the Department, the Comptroller of the Treasury, or their duly appointed representatives, upon request. Records of costs incurred includes the Agency's general accounting records and the Project records, together with supporting documents and records, of the Agency and all subContractors performing work on the Project and all other records of the Agency and subContractors considered necessary by the Department for a proper audit of costs. If any litigation, claim, or audit is started before the expiration of the three (3) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

c) The aforesaid requirements to make records available to the Department shall be a continuing obligation of the Agency and shall survive a termination of the Agreement.

D.20 Inspection:

a) The Agency shall permit, and shall require its Contractor, subContractor or materials vendor to permit, the Department's authorized representatives and authorized agents of the Federal Highway Administration to inspect all work, workmanship, materials, payrolls, records and to audit the books, records and accounts pertaining to the financing and development of the Project.

b) The Department reserves the right to terminate this Agreement for refusal by the Agency or any Contractor, subContractor or materials vendor to allow public access to all documents, papers, letters or other material made or received in conjunction with this Agreement.

D.21 Annual Report and Audit:

a) In the event that an Agency expends $500,000 or more in federal awards in its fiscal year, the Agency must have a single or program specific audit conducted in accordance with the United States Office of Management and Budget (OMB) Circular A-133.

b) All books of account and financial records shall be subject to annual audit by the Tennessee Comptroller of the Treasury or the Comptroller’s duly appointed representative. When an audit is required, the Agency may, with the prior approval of the Comptroller, engage a licensed independent public accountant to perform the audit. The audit agreement between the Agency and the licensed independent public accountant shall be on an agreement form prescribed by the Tennessee Comptroller of the Treasury. Any such audit shall be performed in accordance with generally accepted government auditing standards, the provisions of OMB Circular A-133, if applicable, and the Audit Manual for Governmental Units and Recipients of Grant Funds published by the Tennessee Comptroller of the Treasury.

c) The Agency shall be responsible for reimbursement of the cost of the audit prepared by the Tennessee Comptroller of the Treasury, and payment of fees for the audit prepared by the licensed independent public accountant. Payment of the audit fees of the licensed independent public accountant by the Agency shall be subject to the provisions relating to such fees contained in the prescribed agreement form noted above. Copies of such audits shall be provided to the designated cognizant state agency, the Department, the Tennessee Comptroller of the Treasury, and the Department of Finance and Administration and shall be made available to the public.

D.22 Termination for Convenience:

a) The Department may terminate this agreement without cause for any reason. Said termination shall not be deemed a breach of agreement by the Department. The Department shall give the Agency at least thirty (30) days written notice before the effective termination date. The Agency shall be entitled to compensation for authorized expenditures and satisfactory services completed as of the termination date, but in no event shall the Department be liable to the Agency for compensation for any service which has not been rendered. The final decision as to the amount for which the Department is liable shall be determined by the Department. Should the Department exercise this provision, the Agency shall not have any right to any actual general, special, incidental, consequential, or any other damages whatsoever of any description or amount.

D.23 Termination for Cause:

a) If the Agency fails to properly perform its obligations under this Agreement in a timely or proper manner, or if the Agency violates any terms of this Agreement, the Department shall have the right to immediately terminate the Agreement and withhold payments in excess of fair compensation for completed services. Notwithstanding the above, the Agency shall not be relieved of liability to the Department for damages sustained by virtue of any breach of this Agreement by the Agency.

b) In the event that the Project herein described includes Federal funds, the Agency understands that if the Federal Highway Administration (FHWA) determines that some or all of the cost of this project is ineligible for federal funds participation because of failure by the Agency to adhere to federal laws and regulations, the Agency shall be obligated to repay to the Department any federal funds received by the Agency under this agreement for any costs determined by the FHWA to be ineligible.

c) If the Project herein described lies on the state highway system and the Agency fails to perform any obligation under this section of this agreement, the Department shall have the right to cause the Agency, by giving written notice to the Agency, to close the Project to public use and to remove the Project at its own expense and restore the premises to the satisfaction of the Department within ninety (90) days thereafter.

D.24 How Agreement is Affected by Provisions Being Held Invalid:

a) If any provision of this Agreement is held invalid, the remainder of this Agreement shall not be affected. In such an instance the remainder would then continue to conform to the terms and requirements of applicable law.

D.25 Agreement Format:

a) All words used herein in the singular form shall extend to and include the plural. All words used in the plural form shall extend to and include the singular. All words used in any gender shall extend to and include all genders.

D.26 Certification Regarding Third Party Contracts:

a) The Agency certifies by its signature hereunder that it has no understanding or contract with a third party that will conflict with or negate this Agreement in any manner whatsoever.

b) The Agency further certifies by its signature hereunder that it has disclosed and provided to the Department a copy of any and all contracts with any third party that relate to the Project or any work funded under this Agreement.

c) The Agency further certifies by its signature hereunder that it will not enter into any contract with a third party that relates to this project or to any work funded under this Agreement without prior disclosure of such proposed contract to the Department.

d) The Agency hereby agrees that failure to comply with these provisions shall be a material breach of this Agreement and may subject the Agency to the repayment of funds received from or through the Department under this Agreement and to the payment of all damages suffered by the Department as a result of said breach.

D.27 Amendment:

a) This Agreement may be modified only by a written amendment, which has been executed and approved by the appropriate parties as indicated on the signature page of this Agreement.

D.28 State Liability:

a) The Department shall have no liability except as specifically provided in this Agreement.

D.29 Force Majeure:

a) The obligations of the parties to this Agreement are subject to prevention by causes beyond the parties' control that could not be avoided by the exercise of due care including, but not limited to, acts of God, riots, wars, strikes, epidemics or any other similar cause.

D.30 Required Approvals:

a) The Department is not bound by this Agreement until it is approved by the appropriate State officials in accordance with applicable Tennessee State laws and regulations.

D.31 Estimated Cost:

a) The parties recognize that the estimated costs contained herein are provided for planning purposes only. They have not been derived from any data such as actual bids, etc

b) In the event that the Department is made responsible in section B.1.(a) of this Agreement for the management of the herein described Project, the parties understand that more definite cost estimates will be produced during project development. These more reliable estimates will be provided to the Agency by the Department as they become available.

D.32 Third Party Liability:

a) The Agency shall assume all liability for third-party claims and damages arising from the construction, maintenance, existence and use of the Project to the extent provided by Tennessee Law and subject to the provisions, terms and liability limits of the Governmental Tort Liability Act, T.C.A. Section 29-20-101, et seq, and all applicable laws.

D.33 Deposits:

a) Required deposits and any other costs for which the Agency is liable shall be made available to the Department, whenever requested.

D.34 Department Activities:

a) Where the Agency is managing any phase of the project the Department shall provide various activities necessary for project development. The estimated cost for these activities are included in the funds shown herein.

D.35 Congestion Mitigation and Air Quality Requirement:

a) If the herein described project is funded with Congestion Mitigation Air Quality (CMAQ) funds, this section D.35 shall apply.

1) Whereas the Agency understands and agrees that the funding provided hereunder must be obligated with the Federal Highway Administration within three years from the date of this agreement. It is further agreed that once all requirements have been met for development of the project, the Agency will expend the funds in a manner to insure its expenditure on a continuous basis until the funds are exhausted. Failure to follow this process may result in a loss of funds.

D.36 Investment of Public Funds:

a) The facility on which this project is being developed shall remain open to the public and vehicular traffic for a sufficient time to recoup the public investment therein as shown below:

Amount		Open to Public and Vehicular Traffic
$1.00 - $200,000	=	5 Years
>$200,000 - $500,000	=	10 Years
>$500,000 - $1,000,000	=	20 Years

b) Projects over $1,000,000 carry a minimum 25 years open to public and vehicular traffic requirement and will be subject to individual review.

D.37 Federal Funding Accountability and Transparency Act:

a) **If the Project is funded with federal funds the following shall apply:** The Agency shall comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub.L. 109-282), as amended by section 6202 of Public Law 110-252 ("the Transparency Act") and the regulations and requirements of the federal government issued thereunder, including, but not limited to, 2 CFR Part 170. The Agency shall submit the information needed for the Transparency Act in accordance with the forms and processes identified by the Department.

IN WITNESS WHEREOF, the parties have caused this instrument to be executed by their respective authorized officials on the date first above written.

CITY OF LAKELAND	STATE OF TENNESSEE DEPARTMENT OF TRANSPORTATION
Signature:	**Signature:**
Email: jroman@lakelandtn.org	**Email:** TDOT.COMMISSIONER'S.Office@tn.gov

By

APPROVED AS TO FORM AND LEGALITY	APPROVED AS TO FORM AND LEGALITY
Signature:	**Signature:**
Email: wpatterson@pattersonbray.com	**Email:** TDOT.Legal.Attorneys@tn.gov

By

Signature:

Email: Daniel.Pallme@tn.gov

EXHIBIT "A"

AGREEMENT #: 240268
PROJECT IDENTIFICATION #: 134743.00
FEDERAL PROJECT #: STP-M-5429(11)
STATE PROJECT #: 79LPLM-F3-794

PROJECT DESCRIPTION: Seed Tick Road Roundabout-Project consists of converting the existing stop-controlled intersection at Seed Tick Road and Memphis Arlington Road to a single lane roundabout. The intersection will be realigned to accommodate the single lane roundabout along with adding proper stripping, landscaping and signage leading up to the roundabout.

CHANGE IN COST: Cost hereunder is controlled by the figures shown in the TIP and any amendments, adjustments or changes thereto.

TYPE OF WORK: Roundabout

PHASE	FUNDING SOURCE	FED %	STATE %	LOCAL %	ESTIMATED COST
PE-NEPA	CRP	80	0	20	$60,000.00
PE-DESIGN	CRP	80	0	20	$110,000.00
RIGHT-OF-WAY	STBG-U	80	0	20	$70,000.00
CONSTRUCTION	STBG-U	80	0	20	$1,557,424.00
CEI	STBG-U	80	0	20	$174,992.00
TDOT ES	STBG-U	80	0	20	$17,499.00

INELIGIBLE COST: One hundred percent (100%) of the actual cost will be paid from Agency funds if the use of said state or federal funds is ruled ineligible at any time by the Federal Highway Administration.

LEGISLATIVE AUTHORITY: STBG: 23 U.S.C.A., Section 133, Surface Transportation Block Grant Program funds allocated or subject to allocation to the Agency.

TDOT ENGINEERING SERVICES (TDOT ES): In order to comply with all federal and state laws, rules, and regulations, the TDOT Engineering Services line item in Exhibit A is placed there to ensure that TDOT's expenses associated with the project during construction are covered.

For federal funds included in this contract, the CFDA Number is 20.205, Highway Planning and Construction funding provided through an allocation from the US Department of Transportation.

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - authorizing the submittal of an application to the Tennessee Department of Transportation for the 2024 Statewide Partnership Program.

Staff Contact: Emily Harrell, City Engineer

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve Resolution R-98-2024.

BUDGET IMPACT

There is no budgetary impact related to this resolution.

DISCUSSION

The Tennessee Department of Transportation ("TDOT") is soliciting applications for the 2024 Statewide Partnership Program which supports local jurisdictions in maximizing their funding dollars for strategic transportation investments. The City proposes to apply for additional funds to cover increased construction costs expected on the New Canada Road project. TDOT will notify applicants of funding awards by the end of the calendar year. At this time, the City anticipates no match will be required.

RESOLUTION R-98-2024

AUTHORIZING THE SUBMITTAL OF AN APPLICATION TO THE TENNESSEE DEPARTMENT OF TRANSPORTATION FOR THE 2024 STATEWIDE PARTNERSHIP PROGRAM

WHEREAS, the City of Lakeland, Tennessee, (the "City") desires to apply for financial assistance for the construction of New Canada Road; and,

WHEREAS, the Tennessee Department of Transportation is soliciting applications for the 2024 Statewide Partnership Program to provide additional funds to local jurisdictions for transportation investments; and,

WHEREAS, the City proposes to apply for the Statewide Partnership Program to cover expected construction cost increases on New Canada Road:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Engineer is authorized to submit an application to Tennessee Department of Transportation for the 2024 Statewide Partnership Program.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 18th day of July 2024, the public welfare requiring it.

ATTEST:

_________________________	_________________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - approving Amendment #1 of the Solid Waste Collection and Disposal Contract with Waste Connections of Tennessee, Inc.

Staff Contact: Matthew Brown, Public Works Director

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve resolution R-92-2024.

BUDGET IMPACT

This expenditure is appropriated in the Fiscal Year 2025 Annual Budget for the Solid Waste Fund.

DISCUSSION

Amendment #1 to the solid waste contract would allow Waste Connections of Tennesee, Inc., to take over the distrubution of single stream recyclable material to a designated facility.

RESOLUTION R-92-2024

APPROVING AMENDEMENT #1 OF THE SOLID WASTE COLLECTION AND DISPOSAL CONTRACT WITH WASTE CONNECTIONS OF TENNESSEE, INC.

WHEREAS, the City awarded the Solid Waste Collection and Disposal Contract to Waste Connections of Tennessee, Inc., in April 2024; and

WHEREAS, the City desires Waste Connections of Tennessee, Inc., to distribute recyclable materials to a designated facility; and,

WHEREAS, Waste Connections of Tennessee, Inc., is willing and able to provide these services as specified in Amendment #1; and,

WHEREAS, Amendment #1 includes the additional General Scopes of Services of the Contract:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Manager is hereby authorized to execute and the City Recorder attest Amendment #1 to the Solid Waste Collection and Disposal Contract with Waste Connections of Tennessee, Inc.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 18th day of July 2024, the public welfare requiring it.

ATTEST:

______________________________	______________________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

AMENDMENT NO. 1
TO MUNICIPAL SOLID WASTE COLLECTION AND DISPOSAL CONTRACT WITH WASTE CONNECTIONS OF TENNESSEE, INC.

THIS AMENDMENT (hereinafter "Amendment") is made and entered into this ___________ day of _______________________, 2024 by and between the City of Lakeland (hereinafter "CITY") and Waste Connections of Tennessee, Inc. (hereinafter "CONTRACTOR").

WHEREAS, the parties previously entered into an agreement (hereinafter "Agreement") dated April 1, 2024 to provide solid waste collection services.

WHEREAS, the parties now desire to enter into this Amendment to expand the scope of services provided by the CONTRACTOR.

NOW, THEREFORE, for and in consideration of the mutual promises of the parties to this agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto do agree as follows:

1. General Scopes of Services shall be amended to include the following:
   The Contractor's services will provide for the collection of solid waste materials including (1) Garbage/Rubbish (2) Recyclable Materials, and/or (3) Yard Waste from Residential Units, Municipal Facilities, and other locations designated by the City. Collection service will be performed one (1) time per week for each Customer on a regular route or time schedule.

   Per the specifications contained herein, the Contractor shall:
   (a) provide and maintain Mechanical Carts to City Facilities;
   (b) provide Residential Collection Service;
   (c) provide Collection Service at Municipal Facilities;
   (d) deliver Solid Waste and to the Designated Facilities;
   (e) deliver Single Stream Recyclable Materials to Designated Facilities;
   (f) comply at all times with the requirements in this Agreement and Applicable Law;
   (g) provide all labor, services, supervision, materials, and equipment necessary to accomplish the Contractor's work under this Agreement; and
   (h) perform all its work under this Agreement at Contractor's sole expense, in exchange for the payments by the City and Customers of the Rates authorized herein.

   1. The City will provide the Contractor with a Residential Customer List based on the utility billing system and shall be subject to additions or deletions deemed appropriate by the City.

   The Designated Facilities for disposal of Solid Wastes shall be as follows:

Household Trash	Quad County Landfill 1680 Quad County Lane
Recyclables	**Memphis Recycling Facility**
Yard Waste	Quad County Landfill 1680 Quad County Lane

All collected Household Trash, Yard Waste and Recyclable Materials will be transported to a Designated Facility approved by the City and in a safe, orderly and timely fashion.

The Contractor will be responsible for all costs related to the collection of the specified Solid Wastes and its transportation to the Designated Facilities specified by the City. The City will be responsible for the cost of disposal (Tipping Fees) for Garbage, Rubbish, and other Solid Waste, Yard Trash and Recyclable Materials.

2. Attachment 3 Cost Proposal

RATES FOR RESIDENTIAL COLLECTION SERVICE					
ITEMS	2024	2025	2026	2027	2028
Monthly Unit Price for Curbside Household Waste	$12.75	$13.38	$14.04	$14.74	$15.47
Monthly Unit Price for Curbside Yard Waste	$5.00	$5.25	$5.51	$5.78	$6.06
Monthly Unit Price for Curbside Recyclable Materials	$3.75	$3.92	$4.09	$4.28	$4.48
Unit Price for each additional 96-Gallon Cart	$6.00	$6.30	$6.61	$6.94	$7.28
RATES FOR MUNICIPAL FACILITY COLLECTION SERVICE					
ITEMS	2024	2025	2026	2027	2028
CITY HALL					
96-Gallon Garbage Cart One (1) time per week	$12.75	$13.38	$14.04	$14.74	$15.47
96-Gallon Recycle Cart One (1) time per week	$3.75	$3.92	$4.09	$4.28	$4.48
Six (6) Cubic Yard Container Three (3) times per week	$260.00	$273.00	$286.65	$300.98	$316.02
Thirty (30) Cubic Yard Container Per Collection/Disposal	$400.00	$420.00	$440.00	$460.00	$480.00

IH CLUBHOUSE					
Three (3) Cubic Yard Container Two (2) times per week	$140.00	$147.00	$154.35	$162.06	$170.16
96-Gallon Recycle Cart One (1) time per week	$3.75	$3.92	$4.09	$4.28	$4.48
WASTEWATER TREATMENT PLANT					
Three (3) Cubic Yard Container One (1) time per week	$75.00	$78.75	$82.68	$86.81	$91.15
One (20) Cubic Yard Container Per Collection/Disposal	$400.00	$420.00	$440.00	$460.00	$480.00
LAKELAND PREP SCHOOL					
Eight (8) Cubic Yard Container Three (3) times per week	$340.00	$357.00	$374.85	$393.59	$413.26
LPS ATHLETIC FIELDS					
Eight (8) Cubic Yard Container One (1) time per week	$146.40	$153.72	$161.40	$169.47	$177.94
LAKELAND ELEMENTARY					
Eight (8) Cubic Yard Container Five (5) times per week	$632.61	$664.24	$697.45	$732.32	$768.94

3. The terms and conditions of the original Agreement, except as amended herein, shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Amendment on the ______ day of ________________________, 2024.

APPROVED AS TO FORM:

____
(Municipal Solid Waste Collection and Disposal Amendment No. 1)

	CONTRACTOR:
ATTEST:	Waste Connections of Tennessee, Inc.
By: ________________________	By: ____________________________
Title: _______________________	Title: ___________________________
	OWNER: CITY OF LAKELAND, TENNESSEE
ATTEST:	A Municipal Corporation
By: _________________________ Cheyenne Carter	By: _____________________________ Josh Roman
Title: City Recorder_____________	Title: Mayor_______________________

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - authorizing the City Manager to execute an agreement with Central Technologies, Inc. for Microsoft 365 licensing renewal.

Staff Contact: Josh Thompson, ITS Director

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve resolution R-93-2024.

BUDGET IMPACT

This expenditure is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund.

DISCUSSION

The Microsoft 365 (MS365) environment allows organizations to securely manage their domain users to access cloud and desktop-based applications and services within the MS365 platform. Microsoft requires an annual licensing agreement for access to these applications and services. Executing this agreement will allow staff to maintain access to documents, business applications, and collaborative environments within the MS365 platform.

RESOLUTION R-93-2024

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH CENTRAL TECHNOLOGIES, INC. FOR MICROSOFT 365 LICENSING RENEWAL

WHEREAS, the City of Lakeland, Tennessee, (the “City”) desires to purchase licensing for Microsoft 365 business applications; and,

WHEREAS, Central Technologies, Inc. offers Microsoft 365 licensing; and,

WHEREAS, funding for this purchase is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Manager is hereby authorized to purchase Microsoft 365 licensing in the amount of seventeen thousand four hundred ninety-eight dollars and forty-eight cents ($17,098.48).

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 18th day of July 2024, the public welfare requiring it.

ATTEST:

____________________________	____________________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

Central Technologies, Inc.

We have prepared a quote for you

MS O365 Licenses

Quote # 022649
Version 1

Prepared for:

City of Lakeland Tennessee

Michael Walker
mwalker@lakelandtn.org

Products

Description		Price	Qty	Ext. Price
1907422	**Microsoft Exchange Online (Plan 1)**	$47.04	37	$1,740.48
1907423	**Microsoft Office 365 E1**	$115.36	37	$4,268.32
1907424	**Microsoft Office 365 E3**	$270.48	41	$11,089.68

Subtotal: **$17,098.48**

6101 Industrial Heights Dr. NW
Knoxville, TN 37909
centralinc.com

CENTRAL Technologies, Inc.

MS O365 Licenses

Prepared by:

Knoxville HQ

Mark Smith
615-445-9057
mark@centralinc.com

Prepared for:

City of Lakeland Tennessee

10001 Hwy 70
Lakeland, TN 38002
Michael Walker
(901) 867-2717
mwalker@lakelandtn.org

Quote Information:

Quote #: 022649

Version: 1
Delivery Date: 06/28/2024
Expiration Date: 07/31/2024

Quote Summary

Description	Amount
Products	$17,098.48
Total:	**$17,098.48**

Knoxville HQ

Signature: Mark Smith

Name: Mark Smith

Title: Strategic Account Manager

Date: 06/28/2024

City of Lakeland Tennessee

Signature:

Name: Michael Walker

Date:

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - authorizing the City Manager to execute a multi-year agreement with Trimble for Cityworks license renewal.

Staff Contact: Josh Thompson, ITS Director

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve resolution R-94-2024.

BUDGET IMPACT

This expenditure is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund.

DISCUSSION

The Cityworks platform contains two primary components: an asset management system (AMS) and a permitting and land development system (PLL). The Cityworks AMS environment consists of work activities including Service Requests, Work Orders, and Inspections, while PLL primarily consists of Cases related to the data and processes associated with permits and development applications.

Cityworks serves as a system of record that provides a historical capture of work activity performed by City staff, inspection data for compliance with public safety and environmental requirements, code enforcement data, and all information associated with permits and development activity. Cityworks is also a system of insights that includes analytical tools that can demonstrate trends associated with efficiency and productivity measures and evaluate general costs within its operational and maintenance programs.

Cityworks is accessed and utilized by all departments, with the exception of the Finance department, on a day-to-day basis. AMS records all work activities performed by staff along with labor, equipment, and material costs used in the completion of the activity as well as the asset(s) that the activities reference. PLL records all tasks performed by staff and third parties, which allows for a more streamlined process for each permit type and each stage of a development.

For additional funding context, eighty percent of the licensing costs for Pavement Express license will be reimbursed through a Surface Transportation Block Grant. This funding will be in place for the next three fiscal years.

RESOLUTION R-94-2024

AUTHORIZING THE CITY MANAGER TO EXECUTE A MULTI-YEAR AGREEMENT WITH TRIMBLE FOR CITYWORKS LICENSE RENEWAL

WHEREAS, the City of Lakeland, Tennessee, (the "City") desires to purchase asset management, permitting, and development tracking applications; and,

WHEREAS, Cityworks provides those applications by subscription; and,

WHEREAS, funding for this purchase is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Manager is hereby authorized to execute an agreement, subject to City Attorney review, not to exceed an amount of one hundred sixty-two thousand dollars ($162,000).

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 18th day of July 2024, the public welfare requiring it.

ATTEST:

______________________________	______________________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

ORDER FORM

Order Date:	Date of the last signature below
Trimble Entity Name ("Trimble") and Address:	Azteca Systems, LLC, a Trimble company 11075 South State, Suite 24, Sandy, Utah 84070
Customer Entity Name ("Customer") and Address:	Lakeland, TN 10001 Hwy 70 Lakeland, TN 38002
Billing Contact Name and E-Mail Address:	Josh Thompson 901-867-5403 jthompson@lakelandtn.org
Initial Term:	07/01/2024 – 06/30/2027
Miscellaneous:	*This Order Form converts Current Licensing from Privately Hosted Premium AMS and PLL ELA's to Cityworks Online Premium AMS and PLL ELA's. Customer is also purchasing Pavement Express.* *Purchase orders issued by Customer are issued for administrative purposes only; terms and conditions contained in any such purchase order shall be null and void.*

Licensed Software:

Description	Number of Authorized Users	Annual Term	Total
Server AMS Premium Cityworks Online Enterprise License Agreement (ELA), Includes the Identified Products for up to 60 Named Logins: Office Respond Mobile Native Apps (for iOS/Android) --Includes the following Add-ons: Storeroom Equipment Checkout Contracts Cityworks for Excel Cityworks Analytics AMS eURL (Enterprise URL) Operational Insights Workload Web Hooks CCTV Interface for PACP Pavement Management 1 Sandbox Use of Cityworks AMS Application Programming	**60 Named Logins**	**Year 1: 07/01/2024 - 06/30/2025**	**$ 5,000.00***
		Year 2: 07/01/2025 - 06/30/2026	**$ 45,000.00**
		Year 3: 07/01/2026 - 06/30/2027	**$ 45,000.00**

Interfaces (APIs) with commercially available Cityworks-centric applications that are licensed and maintained by authorized Cityworks partners Use of Cityworks AMS Application Programming Interfaces (APIs) with third party system integrations Server PLL Premium Cityworks Online Enterprise License Agreement (ELA), Includes the Identified Products for up to 30 Named Logins: Office Respond Mobile Native Apps (for iOS/Android) --Includes the following Add-ons: eURL (Enterprise URL) Public Access for PLL Cityworks Analytics PLL Use of Cityworks PLL Application Programming Interfaces (APIs) with commercially available Cityworks-centric applications that are licensed and maintained by authorized Cityworks partners Use of Cityworks PLL Application Programming Interfaces (APIs) with third party system integrations	**30 Named Logins**		

All Licensed Software is for the indicated term and not perpetual. Annual fee herein is based on 1 -15,000 population range. Trimble reserves the right to adjust the annual fee accordingly to align with the Customer's actual population range.

** Fee for Year 1 is in addition to Current Renewal Amount of $40,000.00 for period 07/01/2024 - 06/30/2025 due on or around 07/01/2024.*

Software-as-a-Service: -

Description	Number of Authorized Users	Annual Term	Total
Pavement Express		**Year 1: 07/01/2024 - 06/30/2025**	**$9,000.00**
		Year 2: 07/01/2025 - 06/30/2026	**$9,000.00**
		Year 3: 07/01/2026 - 06/30/2027	**$9,000.00**

Annual fee herein is based on 200 Lane Miles. Trimble reserves the right to adjust the annual fee accordingly to align with the Customer's actual amount of Lane Miles

Annual Amounts Due:

	SaaS	*Licensed Software*	*Total*
Year 1: 07/01/2024 - 06/30/2025	**$9,000.00**	**$45,000.00**	**$54,000.00**
Year 2: 07/01/2025 - 06/30/2026	**$9,000.00**	**$45,000.00**	**$54,000.00**
Year 3: 07/01/2026 - 06/30/2027	**$9,000.00**	**$45,000.00**	**$54,000.00**

<u>Addendums:</u>

1. Terms of Service
2. Supplemental Product Terms
3. Support
4. Service Level Agreement

TERMS AND CONDITIONS

1. Terms and Conditions. All offerings are made available by Trimble subject to the terms and conditions set forth in this Order and the above referenced Addendums.

2. Annual Renewals; Additional Software Products and Licenses. This Order will automatically renew for subsequent 12 month term(s) at then-current pricing, unless either party provides the other with notice of cancellation at least 30 days prior to the expiration of the then-current term. Additional Software Products & Licenses may be added to this Agreement with either an acknowledgement of an official Cityworks quote signed by Licensee and additional fees, if necessary or applicable being paid, or receipt of Purchase Order from Licensee in response to an official Cityworks quote and additional fees, if applicable, being paid.

3. Payment Terms. All fees are due net 30 from the date of the Trimble invoice. Trimble will invoice:

- Year 1: $54,000.00 upon the execution of this Order Form
- Year 2: $54,000.00 upon 06/01/2025
- Year 3: $54,000.00 upon 06/01/2026

4. Annual Price Increase. At each renewal, Trimble has a right to increase the annual fees by the greater of (a) CPI plus two percent (2%) or (b) five percent (5%). "CPI" shall mean for all Urban Consumers, the U.S. City Average, for all items, 1982-84=100 (the “CPI-U”), as published by the Bureau of Labor Statistics, U.S. Department of Labor, and shall be for the prior twelve months as of the date the calculation is made. Trimble will use commercially reasonable efforts to notify Customer of the new pricing no later than sixty (60) days prior to the expiration of the prior term.

5. Electronic Invoices. Customer hereby consents to the receipt of invoices electronically at the indicated e-mail address(es) and accepts such invoices as if received by mail. Customer's e-mail address may be changed by written notice given by Customer to Trimble at: customer_master@trimble.com. Customer is responsible for maintaining a current e-mail address and shall under no circumstances be excused from payment of applicable charges by its failure to access its designated e-mail address.

6. Due Authority. By signing below, the signatory represents that he/she (i) is an authorized representative of Customer and (ii) has the authority to legally and functionally commit the Customer.

[Signature Page to Follow]

ACCEPTANCE

Accepted and agreed:

CUSTOMER:	**TRIMBLE:**
Signature:	Signature:
Print Name:	Print Name: George Mastakas
Title:	Title: Vice President
Date:	Date:

<u>Addendum #1</u>

Terms of Service
v5.1 (O&PS)

These Terms of Service (this "**Agreement**") are entered into by and between (a) the "Trimble" entity identified on an Order or SOW and (b) the "Customer" entity identified on an Order or SOW ("**Customer**" or "**you**"). Certain capitalized terms are defined in Exhibit B and others are defined contextually in this Agreement.

The Order may also be subject to supplemental product terms and conditions referenced in the applicable Order ("**Supplemental Product Terms**"). This Agreement consists of the terms and conditions set forth below and any applicable Supplemental Product Terms, Support Terms, Order, and SOW. Any conflict or inconsistency will be resolved in the following order of precedence: (1) the Order, (2) the Supplemental Product Terms, (3) the body of this Agreement, (4) the Support Terms, and (5) the SOW.

The "**Effective Date**" of this Agreement means the effective date stated on the Order, or if there is no Order, then the date that the Products are first made available to Customer. This Agreement will govern Customer's initial purchase(s) as well as any renewals thereof (unless different terms are specified upon renewal).

If you are accessing or using Products on behalf of your company, you represent that you are authorized to accept this Agreement on behalf of your company. All references to "you" reference your company. **BY SIGNING AN ORDER OR SOW OR INSTALLING, ACCESSING, OR USING ANY PRODUCTS THAT ARE SUBJECT TO THIS AGREEMENT, YOU INDICATE YOUR ACCEPTANCE OF THIS AGREEMENT AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. EACH PARTY EXPRESSLY AGREES THAT THIS AGREEMENT IS LEGALLY BINDING UPON IT.**

1. Products.

1.1 <u>Product Types</u>. The following provisions apply to the applicable Product type, as set forth in the Order.

(a) <u>Software-as-a-Service</u>. For Products that are deployed as Software-as-a-Service, as set forth in the Order, subject to the terms of this Agreement, Customer may access and use the Products during the Term only for its internal business purposes in accordance with the Documentation, Usage Limitations, any applicable Supplemental Product Terms, and this Agreement.

(b) <u>Licensed Software</u>. For Products that are Licensed Software for deployment on premises or on a device, as set forth in the Order, subject to the terms of this Agreement, Trimble hereby grants Customer a non-transferable, non-sublicensable, non-exclusive license, during the Term, to install, copy, and use the Licensed Software on systems or devices under Customer's control only for its internal business purposes in accordance with the Documentation, Usage Limitations, any applicable Supplemental Product Terms, and this Agreement. Licensed Software is licensed, not sold.

(c) <u>Hosting Services</u>. For Products that are Licensed Software, but are deployed through hosting services delivered by Trimble, as set forth in the Order, the Products are subject to the terms and conditions applicable to Licensed Software.

1.2 <u>Authorized Users and Administrators</u>.

(a) Only Authorized Users may access or use the Products. User IDs are granted to individual, named persons, and each Authorized User will keep login credentials confidential and not share them with anyone else. Customer is responsible for its Authorized Users' compliance with this Agreement and actions taken through their accounts. In the event an Authorized User is no longer authorized to use a Product on Customer's behalf, Customer will promptly de-activate such Authorized User's access. Only if expressly permitted under the applicable Order or Supplemental Product Terms, Customer may transfer Authorized User status from one individual to another at any time, provided that use of the Products by its Authorized Users in the aggregate remains within any applicable Usage Limitations. Customer will promptly notify Trimble if it becomes aware that any of its Authorized User login credentials have been compromised.

(b) If a Product permits administrator access, as described in the Documentation, Customer may designate one or more Authorized Users to be administrators (each an "**Administrator**") with control over Customer's account, including management of Authorized Users and Customer Data, as described in the Documentation. Customer is fully responsible for its choice of Administrators and any actions they take with respect to the Products. Trimble's responsibilities do not extend to the internal management or administration of the Products for Customer.

1.3 <u>API Access and Customer Applications</u>.

(a) <u>API</u>. Products may include one or more application program interfaces ("**API(s)**") that allow Customer to develop applications, code, or services that communicate with the Products (collectively, "**Customer Applications**"). Such APIs, if any, may be available upon request. Customer may use an API only if such use is authorized in the Documentation or otherwise in writing by Trimble. Use of APIs may be subject to additional terms and conditions. Trimble may modify APIs from time to time, and Trimble is not responsible for the compatibility of any such modifications with Customer Applications.

(b) Use of Customer Applications. If use of an API is authorized, subject to the terms of this Agreement and in compliance with the applicable Documentation, Customer may develop Customer Applications for use solely by Customer's Authorized Users. Customer will not develop Customer Applications for the benefit of, or distribute Customer Applications to, any third party. Customer assumes all risk and liability regarding the development or use of any Customer Applications. Other customers or Trimble itself may independently develop applications similar to Customer Applications.

1.4. Restrictions. Customer will not (and will not permit, encourage, or assist anyone else to) do any of the following: (a) provide access to, distribute, sell, or sublicense the Products to a third party; (b) use the Products on behalf of, or to provide any product or service to, third parties; (c) use the Products to develop a similar or competing product or service; (d) reverse engineer, decompile, disassemble, or seek to access the source code or non-public APIs to any element of the Products, except to the extent expressly permitted by Law (and then only after providing prior written notice to Trimble); (e) modify or create derivative works of the Products or copy any element of the Products (other than in connection with making copies of Licensed Software authorized under this Agreement); (f) remove or obscure any proprietary notices in the Products; (g) publish benchmarks or performance information about the Products, except to the extent expressly permitted by Law; (h) interfere with the Products' operation or its use by others, circumvent its access restrictions or, without the prior written permission of Trimble, conduct any security or vulnerability test of the Products; (i) transmit any viruses or other harmful materials to the Products; (j) submit to the Products any information that is inappropriate, defamatory, obscene, salacious, or unlawful, or use the Products to defame, harass, stalk, threaten, or otherwise violate the rights of others; (k) use the Products to advertise, offer to sell or buy goods, or otherwise for business promotional purposes; or (l) for Licensed Software, unless expressly permitted in the Order, Supplemental Product Terms, or the Documentation, use or host any Licensed Software in a virtual server environment.

1.5 Trials and Betas. If Customer receives access to the Products or any features thereof on a free or trial basis or as an alpha, beta, or early access offering ("**Trials and Betas**"), use is permitted only for Customer's internal evaluation to determine whether to purchase a license or subscription to the Product during the period designated by Trimble (or if not designated, 30 days). If Customer purchases a license or subscription to the Products, this Agreement will apply to Customer's use unless otherwise specified in the applicable Order. Trials and Betas are optional and Trimble may cease offering Trials and Betas at any time for any reason. Trials and Betas may be inoperable, incomplete, or include features that Trimble may never release, and their features and performance information are Trimble's Confidential Information. If the Products include a mechanism that limits access to Trials and Betas, Customer will not attempt to circumvent any such mechanism or restriction. **Notwithstanding anything else in this Agreement: (a) Trimble has no obligation to retain Customer Data used with Trials and Betas; (b) Trimble provides the Trial and Betas "AS-IS" with no warranty, indemnity, service levels, or support; and (c) Trimble's liability for Trials and Betas will not exceed US$50**.

1.6 Educational Versions. Notwithstanding the foregoing, for any version of the Products designated as "educational," or a similar term, Customer may use the Products solely for educational purposes (i.e., by an instructor or a student at an educational institution and while engaged in educational work). Such educational versions may not be used (a) by any other person; (b) by any educational institution for any non-educational purposes; or (c) for any for-profit purpose, including professional work or training offered for a fee, or by commercial entities.

1.7 Internet Connection. Products may require an active Internet connection or other means of electronic communications to operate, which are not the responsibility of Trimble.

1.8 Delivery and Deployment. Products, Documentation, and License Keys, if any, will be delivered by electronic means unless otherwise specified on the applicable Order. Delivery is deemed to occur on the date on which a Product and License Key, if any, are first made available to Customer. Products may gather and transmit to Trimble license compliance and activation data. Customer will not disable, modify, or interfere with the operation of any such functionality of the Products. Trimble may use the foregoing information to validate the authenticity of Customer's license to the Products, to register Customer's Products, for license metering, and to protect Trimble against unlicensed or illegal use of the Products.

2. Data Rights.

2.1 Data Usage and Ownership.

(a) Customer hereby grants to Trimble and its Affiliates the non-exclusive, worldwide, irrevocable, royalty-free right: (i) to use Customer Data during the Term to provide the Products, Support, and Professional Services to Customer; (ii) to use and disclose Customer Data as otherwise permitted pursuant to this Agreement or any written consent or instructions of Customer; and, (iii) on a perpetual basis: (A) to create, use, and disclose Anonymized Data for any purpose and (B) subject to Trimble's confidentiality obligations in Section 13 (Confidentiality) and all applicable Data Protection Legislation, to use Customer Data to develop, maintain, and improve the Products and any other products, software, and services of Trimble or its Affiliates.

(b) Except for Trimble's use rights set forth in this Agreement, as between the parties, Customer retains all intellectual property and other rights in Customer Data. Trimble owns all right, title, and interest in Anonymized Data (including, without limitation, any and all intellectual property rights).

(c) Customer will not have access to Customer Data after termination or expiration of the Term, unless otherwise indicated in the Documentation, Order, Supplemental Product Terms, or the parties agree otherwise in writing.

(d) In the event of any conflict between the terms of Section 13 (Confidentiality) and this Section 2.1 (Data Usage and Ownership), the terms of this Section 2.1 (Data Usage and Ownership) will control.

2.2 <u>Personal Information and Data Protection</u>.

(a) All applicable laws, rules, and regulations relating to privacy and data protection, including GDPR and CCPA (as defined below), are referred to as "**Data Protection Legislation**." "**Personal Information**" is defined as in the applicable Data Protection Legislation, or if no definition is provided, any personally identifiable information which is either (i) provided by Customer or on its behalf as required for and in connection with the normal use and operation of Products or (ii) automatically collected through the Products on Customer's behalf. "**Applicable**," in this context, means the Data Protection Legislation applicable to Customer at Customer's principal place of business or to Trimble at Trimble's principal place of business, and such laws that Customer notifies Trimble in writing of that apply to the parties.

(b) Each party will comply with all applicable requirements of the Data Protection Legislation that applies to it. This Section 2.2(b) is in addition to, and does not relieve, remove, or replace, a party's obligations or rights under the applicable Data Protection Legislation.

(c) Without prejudice to the generality of Section 2.2(b), Customer will ensure that it has all necessary and appropriate consents and notices in place (i) to enable lawful transfer of the Personal Information to Trimble for the duration and purposes of the Agreement and (ii) to enable Trimble to lawfully use, process, and transfer the Personal Information in accordance with this Agreement, including on the Customer's behalf.

(d) The parties acknowledge that: (i) if Trimble processes any Personal Information hereunder, it is on the Customer's behalf when performing its obligations under this Agreement and (ii) the Personal Information may be transferred, stored, and/or accessed from outside of the country where the Customer's principal place of business is located in order to provide the Products or to otherwise perform any of Trimble's other obligations under this Agreement.

(e) If the processing of Personal Information by Trimble is subject to the General Data Protection Regulation ((EU) 2016/679) or the Data Protection Act 2018 of the United Kingdom ("**GDPR**"), then, at the request of Customer, the parties will execute an applicable data processing addendum.

(f) If the processing of Personal Information by Trimble is subject to the California Consumer Privacy Act of 2018 (Title 1.81.5, §1798.100 et. seq.) ("**CCPA**"), then the terms of this clause (f) apply, and capitalized terms shall have the meanings afforded to them under the CCPA unless otherwise stated. In connection with a Verifiable Consumer Request by a Consumer pursuant to an exercise of rights under CCPA related to Personal Information, (i) Trimble is Customer's Service Provider; (ii) Customer (and not Trimble) will respond to such request; and (iii) if necessary, in connection with such request, Customer will utilize the tools and information provided or made generally available by Trimble, such as Trimble's online portals or APIs and Documentation regarding Trimble's products, software, and services. To the extent such tools do not enable Customer to respond to a Verifiable Consumer Request, upon Customer's request, Trimble will provide reasonable assistance with respect to Personal information in Trimble's systems that is required for Customer's response to such request. Trimble will not retain, use, or disclose Personal Information for any purpose other than as expressly permitted under this Agreement or as otherwise permitted under CCPA. A Verifiable Consumer Request to delete Personal Information will not require Trimble to delete Personal Information required to provide Customer with the Products (as defined in this Agreement), which includes any of Trimble's Service Provider(s) acting on Trimble's behalf to provide the Products (as defined in this Agreement); provided, however, that such service provider(s) do not have a separate right to Sell or otherwise use Customer's Personal Information other than as required for Trimble's Business Purposes.

3. Customer Obligations.

3.1 <u>Compliance with Laws</u>. Customer is responsible for complying with all Laws in its use of the Products and any results derived from the Products.

3.2 <u>No High Risk Activities</u>. Customer will not use the Products for High Risk Activities. Customer acknowledges that the Products are not intended to meet any legal obligations for High Risk Activities.

3.3 <u>No Prohibited Data</u>. Customer will not use the Products with Prohibited Data. Customer acknowledges that the Products are not intended to meet any legal obligations for these uses, including HIPAA requirements, and that Trimble is not a Business Associate as defined under HIPAA.

3.4 Customer Data. Customer is responsible for its Customer Data, including its content, accuracy, and compliance with Laws. Customer represents and warrants that it has made all disclosures and has all rights, consents, and permissions necessary to use its Customer Data with the Products and grant Trimble the rights in Section 2.1 (Data Use and Ownership), all without violating or infringing Laws, third-party rights (including intellectual property, publicity, or privacy rights), or any terms or privacy policies that apply to its Customer Data.

4. Suspension of Access to Products. Trimble may suspend Customer's access to the Products, Support, and/or Professional Services, without liability, and in whole or in part, if (a) Customer breaches Section 1.4 (Restrictions) or Section 3 (Customer Obligations); (b) Customer's account is 10 days or more overdue; or (c) Customer's actions risk harm to other customers or the security, availability, or integrity of the Products. Where practicable, Trimble will use reasonable efforts to provide Customer with prior notice of the suspension. Once Customer resolves the issue requiring suspension, Trimble will promptly restore Customer's access to the Products in accordance with this Agreement.

5. Certain Product Features. The following provisions apply to the extent applicable to the Products.

5.1 Devices. The Products may be compatible with or require use of a device ("**Device**"). Compatible Devices are specified in the applicable Documentation. Trimble makes no warranties regarding the operation of any Device or continued compatibility of a Product with any such Device. Customer is solely responsible for the configuration and operation of the Device. The results obtained through a Product may be affected by, and Trimble will have no liability for, the compatibility, placement, configuration, or operation of the Device, weather or other environmental conditions, color or composition of materials being scanned, or other factors outside of Trimble's control.

5.2 Use with Other Trimble Products. The Products may allow Customer to connect with other products or services made available by Trimble. Use of such other products or services that are not part of the Products may require payment of a separate fee and are governed by those products or services' respective terms of service, end user license agreement, or other agreement, and not by this Agreement.

5.3 Scripts. The Products may allow Customer to input and/or develop custom scripts, macros, and commands (collectively, "**Scripts**") that control the operation of the Products. Scripts may be available for download or purchase from Trimble or third parties, or created by Customer. Unless otherwise specified by Trimble in writing, Scripts are not part of the Product. Customer's development and use of any Scripts are solely at its own risk. To the extent any Scripts are provided by a third party, such Scripts will be deemed to be Third-Party Materials, and may be subject to Third-Party Terms.

5.4 Third-Party Materials. The Products may provide Customer with access to Third-Party Materials. Third-Party Materials are not part of the Products. To the extent specified by Trimble (including in any Supplemental Product Terms or Documentation), use of the Third-Party Materials may be subject to additional terms or restrictions ("**Third-Party Terms**"). Customer is solely responsible for its compliance with any Third-Party Terms, and failure to comply with such terms may result in termination of Customer's right to access any features of the Products that utilize such Third-Party Materials. If no Third-Party Terms are specified, Customer may use Third-Party Materials solely in support of Customer's authorized use of the Products in accordance with this Agreement.

5.5 Open Source. The Products may incorporate third-party open source software ("**Open Source**"), as listed in the Documentation or Supplemental Product Terms, or otherwise made available by Trimble. To the extent the terms of the Open Source license prohibit the terms of this Agreement from applying to the Open Source, the terms of the Open Source license will apply to the Open Source on a stand-alone basis instead of this Agreement.

5.6 Content Subscriptions. This Section applies if the Product makes available Third-Party Materials as a data or content subscription ("**Subscription Content**"). If Customer has a separate agreement with Trimble or the applicable third party in place regarding the use of Subscription Content ("**Subscription Content Agreement**"), then such Subscription Content Agreement governs the use of Subscription Content accessed through the Product, but not the use of the Product itself, which will be governed by this Agreement. If no Subscription Content Agreement is in place, then, unless otherwise authorized by Trimble in writing, such Subscription Content may only be used solely for Customer's internal purposes during the applicable Term and only when accessed pursuant to a manual end user request. Customer will not: (i) access, extract, or download any Subscription Content, or portions thereof, in batch or mass by any means; (ii) sell, offer to sell, rent, sublicense, or transfer any copies of the Subscription Content, or portions thereof, to a third party or allow a third party to use the Subscription Content; (iii) use the Subscription Content to develop services or products for sale or include any portion of the Subscription Content in any product or service; (iv) use any portion of the Subscription Content to create a competitive service, product, or technology; (v) recreate the Subscription Content or create otherwise a separate database or other repository of Subscription Content; (vi) use Subscription Content to train, augment, or correct another database or information repository; or (vii) make any portion of the Subscription Content available to the public in any manner. Upon notice from Trimble and/or any termination or expiration of the Term, Customer will immediately cease using and delete/destroy all electronic and physical copies of Subscription Content.

5.7 Third-Party Platforms.

(a) Customer may choose to use a Product with Third-Party Platforms. Third-Party Platforms are not part of the Product. Subject to payment of additional fees, Trimble may host Trimble-approved Third-Party Platforms or integrations to Third-Party Platforms for use in connection with the Products.

(b) Use of Third-Party Platforms is subject to Customer's agreement with the relevant provider and not this Agreement, and may enable data exchange between the Products and Third-Party Platform. Trimble does not control and has no liability for Third-Party Platforms, including their security, functionality, operation, availability, or interoperability, or how the Third-Party Platforms or their providers use Customer Data. If Customer enables a Third-Party Platform with a Product, Trimble may access and exchange Customer Data with the Third-Party Platform on Customer's behalf.

(c) Customer represents and warrants that it shall, and shall require any provider of a Third-Party Platform to: (i) establish and maintain industry standard technical, organizational, physical, and administrative safeguards designed to ensure the security and integrity of the Product and Trimble cloud environment and (ii) comply with the security controls, configuration requirements, and access limitations imposed by Trimble, as may be modified by Trimble from time to time. If Trimble hosts the Third-Party Platform or integration to the Third-Party Platform, Customer represents and warrants to Trimble that Customer has all rights necessary to grant Trimble the right to host the Third-Party Platforms on its behalf.

5.8 Third-Party Application Stores.

(a) Purchase from Application Store. If Customer obtains the Product through a third-party application store, marketplace, or other site or service (each, an "**Application Store**"), such Application Store is considered a reseller. All Fees are non-refundable once paid. Customer's download of the Product may be subject to other terms as specified by the operator of the Application Store from which Customer downloaded the Product.

(b) Apple-Specific Terms. If Customer downloaded the Product from Apple Inc.'s ("**Apple's**") Application Store, the following terms are part of this Agreement:

(i) This Agreement is between Customer and Trimble, and not with Apple. However, as required by Apple, Apple and its subsidiaries will be third-party beneficiaries of this Agreement and will have the right (and will be deemed to have accepted the right) to enforce this Agreement against Customer as a third-party beneficiary.

(ii) To the maximum extent permitted by Law, Apple will have no warranty obligation with respect to the Product, and, as between Apple and Trimble, any other claims, losses, liabilities, damages, costs, or expenses attributable to a failure to conform to a warranty will be Trimble's responsibility. Apple has no obligation whatsoever to furnish any maintenance or support services with respect to the Product.

(iii) As between Trimble and Apple, Trimble is solely responsible for the Product and for addressing any claims Customer or any third parties have about the Product or Customer's possession or use of the Product, including without limitation (A) product liability claims; (B) any claim that the Product fails to conform to any applicable legal or regulatory requirement; and (C) claims arising under consumer protection or similar legislation. In the event of any third-party claim that the Product or Customer's possession or use of the Product infringes that third party's intellectual property rights, Apple will not be responsible for the investigation, defense, settlement, or discharge of such claim.

6. Support and Professional Services.

6.1 Support. During the Term, Trimble will provide support and/or maintenance for the Products ("**Support**" or "**Software Assurance**") in accordance with the service level commitments specified on the applicable Order or the Supplemental Product Terms, if any ("**Support Terms**").

6.2 Professional Services. Trimble will provide Professional Services related to the Products as specified on the Order or a statement of work or work order ("**SOW**") signed or accepted by Customer. Professional Services are subject to the terms and conditions set forth in Exhibit C and the applicable Order or SOW.

7. Term and Termination.

7.1 Initial Term. If Customer purchases a subscription to a Product or a license to Licensed Software for a limited period of time, the duration of the initial term of the Order and this Agreement is set forth in the Order ("**Initial Term**"). Upon the expiration of the Initial Term, the Order and this Agreement shall automatically renew in accordance with Section 7.2 (Renewal Term(s)), unless otherwise set forth in the Supplemental Product Terms or the Order. The Initial Term and any renewal period are collectively referred to as "**Term**."

7.2 Renewal Term(s). Unless otherwise set forth in the Order, if Customer purchases a termed license or subscription to a Product or Support, upon the expiration of the Initial Term or any renewal Term, the Term shall automatically renew for subsequent term(s) equal in duration to the then-current term, until either party provides written notice to the other party of its intent not to renew at least 30 days before the expiration of the then-current Term.

7.3 Termination. Either party may terminate this Agreement, an Order, or a SOW if the other party (a) fails to cure a material breach of this Agreement (including a failure to pay Fees) within 30 days after written notice; (b) ceases operation without a successor; or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days. Termination of the Agreement will terminate all Orders and any SOWs, unless otherwise stated in the termination notice. Termination of an Order or SOW will not, by itself, terminate this Agreement.

7.4 Effect of Termination. Upon expiration or termination of this Agreement or an Order, Customer's right to use the Products (including its license to any Product) will cease and Customer will immediately cease any and all use of and access to the Products and will delete (or, upon request, return) all copies of any Product. At the disclosing party's request upon expiration or termination of this Agreement, the receiving party will delete all of the disclosing party's Confidential Information (excluding Customer Data, which is addressed in Section 2.1 (Date Usage and Ownership)). Customer Data and other Confidential Information may be retained in the receiving party's standard backups after deletion but will remain subject to this Agreement's confidentiality restrictions.

7.5 Survival. These Sections survive expiration or termination of this Agreement: 1.4 (Restrictions), 2.1 (Data Usage and Ownership), 3 (Customer Obligations), 7.4 (Effect of Termination), 7.5 (Survival), 8 (Financial Terms), 9.3 (Disclaimers), 10 (Ownership), 11 (Limitations of Liability), 12 (Indemnification), 13 (Confidentiality), 15 (General Terms), and Exhibit B. Except where an exclusive remedy is provided, exercising a remedy under this Agreement, including termination, does not limit other remedies a party may have.

8. Financial Terms.

8.1 Fees. Fees are as described in the Order or SOW ("**Fees**"). The payment terms for the first invoice for Products or Support will be set forth on the Order. Thereafter, the payment terms for Fees for Products and Support under that Order will be set forth in the invoice. Unless otherwise stated in a SOW or set forth in an invoice, Fees for Professional Services under an SOW are due upon receipt. Trimble may, without limiting Trimble's other rights and remedies, accelerate Customer's unpaid Fees under any Order for any breach of Customer's payment obligations under any Order so that all such obligations become immediately due and payable, including Fees for all unbilled future Fees under any Order.

8.2 Increases. Unless otherwise set forth in the Order, (a) all recurring Fees will be fixed for a period of 12 months from the Effective Date, and (b) thereafter, Trimble may increase recurring Fees once every 12 months during the Term.

8.3 Late Fees. Any amount due under this Agreement that remains unpaid after its due date will bear interest at the lower of 1.5% per month or the maximum rate permitted by Law, calculated from the date such amount was due until the date that payment is received. Customer will pay all costs and expenses of collection (including attorneys' fees) incurred by Trimble collecting any amounts past due under this Agreement. Subject to any mandatory Laws to the contrary, all Fees and expenses are non-refundable.

8.4 Taxes. Customer will pay any sales, use, GST, value-added, withholding, or similar taxes or levies that apply to its Orders or SOWs, whether domestic or foreign ("**Taxes**"), other than Trimble's income tax. Fees and expenses are exclusive of Taxes. Customer will pay any foreign exchange transaction fees and any foreign exchange profits or losses incurred on such transactions.

9. Warranties and Disclaimers.

9.1 Limited Warranty. Unless otherwise specified in the Supplemental Product Terms, and subject to any mandatory Laws to the contrary, Trimble warrants to Customer that during the Warranty Period the Products will perform materially as described in the Documentation. The "**Warranty Period**" is (i) 90 days from the Effective Date for Licensed Software deployed on premises or on a device pursuant to Section 1.1(b) and (ii) for the duration of the Term for any (1) Software-as-a-Service made available pursuant to Section 1.1(a) or (2) Licensed Software deployed through hosting services provided by Trimble pursuant to Section 1.1(c).

9.2 Warranty Remedy. If Trimble breaches Section 9.1 (Limited Warranty) during the Warranty Period, Customer may make a reasonably detailed warranty claim within 30 days of discovering the issue. Trimble will correct such breach by issuing corrected instructions, a restriction, or a bypass, or by replacing the Product. Subject to any mandatory Laws to the contrary, these procedures are Customer's exclusive remedy and Trimble's entire liability for breach of the warranty in Section 9.1 (Limited Warranty). This warranty does not apply to (a) issues caused by misuse or unauthorized modifications; (b) unsupported versions of Licensed Software; (c) issues in or caused by Third-Party Platforms or other third-party systems; or (d) Trials and Betas or other evaluation use.

9.3 Disclaimers.

(a) General. **EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1 (LIMITED WARRANTY) OR IN ANY SUPPLEMENTAL PRODUCT TERMS, PRODUCTS, SUPPORT, AND PROFESSIONAL SERVICES ARE PROVIDED "AS IS". TRIMBLE AND ITS SUPPLIERS MAKE NO (AND HEREBY DISCLAIM ALL) OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, OR ANY WARRANTIES ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING ITS EXPRESS OBLIGATIONS IN SECTION 6 (SUPPORT AND PROFESSIONAL SERVICES), TRIMBLE DOES NOT WARRANT THAT CUSTOMER'S USE OF THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE, THAT TRIMBLE WILL REVIEW CUSTOMER DATA FOR ACCURACY, OR THAT IT WILL MAINTAIN CUSTOMER DATA OR OTHER DATA WITHOUT LOSS. TRIMBLE IS NOT LIABLE FOR DELAYS, FAILURES, OR PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE TRIMBLE'S CONTROL. TRIMBLE WILL NOT BE LIABLE IN ANY MANNER FOR THE OUTPUT OBTAINED THROUGH USE OF THE PRODUCTS OR CUSTOMER'S RELIANCE ON SUCH OUTPUT. CUSTOMER IS RESPONSIBLE FOR THE SUPERVISION, MANAGEMENT, AND CONTROL OF CUSTOMER'S USE OF THE PRODUCTS. THIS RESPONSIBILITY INCLUDES THE DETERMINATION OF APPROPRIATE USES FOR THE PRODUCTS AND THE SELECTION OF THE PRODUCTS AND OTHER PROGRAMS TO ACHIEVE INTENDED RESULTS. ANY FORMS, POLICIES, OR OTHER MATERIALS PROVIDED BY TRIMBLE THROUGH THE PRODUCTS OR DOCUMENTATION ARE NOT INTENDED AND SHOULD NOT BE RELIED UPON AS LEGAL ADVICE OR LEGAL OPINION. CUSTOMER SHOULD CONSULT ITS OWN LEGAL COUNSEL REGARDING THE USE OF ANY SUCH MATERIALS. CUSTOMER IS ALSO RESPONSIBLE FOR ESTABLISHING THE ADEQUACY OF INDEPENDENT PROCEDURES FOR TESTING THE RELIABILITY AND ACCURACY OF ANY OUTPUT OF THE PRODUCTS. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT ANY STATUTORILY REQUIRED WARRANTIES WILL BE LIMITED TO THE SHORTEST LEGALLY PERMITTED PERIOD.**

(b) Customer Applications. Trimble hereby disclaims any warranty, support, or other obligations with respect to any Customer Applications.

(c) Scripts. **Subject to mandatory Laws to the contrary, Scripts are provided "AS IS" and Trimble hereby disclaims any warranty, support, or other obligations with respect to any Scripts, including, without limitation, any Scripts provided by Trimble.**

(d) Third-Party Materials and Third-Party Platforms. Third-Party Materials and Third-Party Platforms are provided "AS IS" and Customer assumes all risk and liability regarding any use of (or results obtained through) Third-Party Materials or Third-Party Platforms. Trimble and its suppliers make no warranty or guarantee regarding any Third-Party Materials or Third-Party Platforms, including regarding their accuracy or continued availability or compatibility.

(e) High Risk Activities and Prohibited Data. Trimble and its suppliers specifically disclaim any responsibility for, and will not be liable in any manner arising from, any use of the Products in connection with High Risk Activities or with any Prohibited Data.

10. Ownership. Neither party grants the other any rights or licenses not expressly set out in this Agreement. Except for Customer's use rights in this Agreement, Trimble and its licensors retain all intellectual property and other rights in the Products, Documentation, other deliverables and related Trimble technology, templates, formats, and dashboards, including any modifications or improvements to these items made by Trimble. If Customer provides Trimble with any suggestions, ideas, enhancement requests, feedback, recommendations, or other information relating to a Product ("**Feedback**"), Customer hereby grants to Trimble and its Affiliates a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and otherwise exploit the Feedback.

11. Limitations of Liability. TRIMBLE'S CUMULATIVE LIABILITY TO CUSTOMER FOR ALL CLAIMS IN ANY WAY ARISING OUT OF OR RELATING TO THE ORDER, ANY SOW, THIS AGREEMENT, AND THE PRODUCTS OR SERVICES, REGARDLESS OF THE FORM OR THEORY OF ACTION (INCLUDING BREACH OF CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE THEORY), SHALL NOT EXCEED THE TOTAL AMOUNT OF FEES PAID TO TRIMBLE BY CUSTOMER FOR THE RELEVANT PRODUCT OR SERVICES IN THE PRIOR 12 MONTHS UNDER THIS AGREEMENT. IN NO EVENT WILL TRIMBLE OR ITS SUPPLIERS OR THIRD-PARTY VENDORS HAVE ANY OBLIGATION OR LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, OR AGGRAVATED DAMAGES, LOSS OF GOODWILL, LOSS OF DATA, OR ANTICIPATED PROFITS ARISING FROM OR RELATING TO THIS AGREEMENT, CUSTOMER'S USE OF OR THE PERFORMANCE OF THE PRODUCTS OR FROM THE SERVICES, OR FOR ANY OTHER REASON, EVEN IF TRIMBLE OR ITS SUPPLIERS OR THIRD-PARTY VENDORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. CUSTOMER ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT TRIMBLE WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

12. Indemnification. Customer will defend, indemnify, and hold harmless Trimble from and against any and all third-party claims, costs, damages, losses, liabilities, and expenses (including reasonable attorneys' fees and costs) arising out of or in connection with (a) any Customer Data, or (b) Customer's breach or alleged breach of Section 3 (Customer Obligations), Section 5.4 (Third-Party Materials), or Section 5.7 (Third-Party Platforms) (each, a "**Claim**"). Trimble will give Customer prompt written notice of any Claim and will cooperate in relation to the Claim at Customer's expense. Customer will have the exclusive right to control and settle any Claim, except that Customer may not settle a Claim without Trimble's prior written consent (not to be unreasonably withheld) if the settlement requires Trimble to admit any liability or take any action or refrain from taking any action (other than ceasing use of infringing materials). Trimble may participate in the defense of any Claim at its expense.

13. Confidentiality.

13.1 Definition. "**Confidential Information**" means information disclosed to the receiving party under this Agreement that is designated by the disclosing party as proprietary or confidential or that should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. Trimble's Confidential Information includes the terms and conditions of this Agreement and any technical or performance information about the Products, Support, or Professional Services. Customer's Confidential Information includes Customer Data.

13.2 Obligations. As a receiving party, each party will use reasonable care to protect the disclosing party's Confidential Information from being disclosed to third parties except as permitted in this Agreement, including, without limitation, in Section 2.1 (Data Usage and Ownership) and (b) only use Confidential Information to fulfill its obligations and exercise its rights in this Agreement. The receiving party may disclose Confidential Information to its employees, agents, Affiliates, contractors, and other representatives having a legitimate need to know (including, for Trimble, the subcontractors referenced in Section 15.8 (Subcontractors), provided it remains responsible for their compliance with this Section and they are bound to confidentiality obligations no less protective than this Section.

13.3 Exclusions. These confidentiality obligations do not apply to information that the receiving party can document (a) is or becomes public knowledge through no fault of the receiving party; (b) it rightfully knew or possessed prior to receipt under this Agreement; (c) it rightfully received from a third party without breach of confidentiality obligations; or (d) it independently developed without using the disclosing party's Confidential Information.

13.4 Remedies. Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. Each party may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this Section.

13.5 Required Disclosures. Nothing in this Agreement prohibits either party from making disclosures, including of Customer Data or Confidential Information, if required by Law, subpoena, or court order, provided (if permitted by Law) it notifies the other party in advance and reasonably cooperates in any effort to obtain confidential treatment.

14. Publicity. Neither party may publicly announce this Agreement except with the other party's prior consent or as required by Law. Trimble may include Customer and its trademarks in Trimble's customer lists and promotional materials but will cease this use at Customer's written request.

15. General Terms.

15.1 Assignment. Trimble may assign this Agreement upon notice to Customer. Customer may not assign or transfer this Agreement (by operation of law or otherwise) without the prior consent of Trimble. Any non-permitted assignment is void. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns.

15.2 Non-Solicitation. During the Term of this Agreement, and for a period of one year following expiration or termination of this Agreement, Customer shall not on its own behalf or on behalf of any third party, solicit, hire, or cause to be hired as an employee or engage or caused to be engaged as an independent contractor any person who was an employee or independent contractor of Trimble, without the prior written consent of Trimble.

15.3 Notices. Except as set out in this Agreement, any notice or consent under this Agreement must be in writing and will be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if by certified or registered mail (return receipt requested); or (c) one day after dispatch if by an internationally reputable commercial overnight delivery service. If to Trimble, notice must be provided to the address in Exhibit A, with a copy to Trimble Inc., Attn: General Counsel – Important Notice, 935 Stewart Drive, Sunnyvale, CA 94085, USA. If to Customer, Trimble may provide notice to the address Customer provided at registration or on the Order. Either party may update its address with notice to the other party. Trimble may also send general and operational notices to Customer by email or through the Products, including suspension, collection, and termination notices related to overdue Fees.

15.4 Entire Agreement. This Agreement (which includes the Order, any SOWs, any applicable Supplemental Product Terms, and any applicable Support Terms) is the parties' entire agreement regarding its subject matter and supersedes any prior or contemporaneous agreements regarding its subject matter. In this Agreement, headings are for convenience only and "including" and similar terms are to be construed without limitation. The terms in any Customer purchase order, business form, or other similar documents will not amend or modify this Agreement and are expressly rejected by Trimble; any of these Customer documents are for administrative purposes only and have no legal effect.

15.5 Amendments. Except as otherwise provided herein, any amendments, modifications, or supplements to this Agreement must be in writing and signed by each party's authorized representatives or, as appropriate, agreed through electronic means provided by Trimble. Documentation and Support Terms are not subject to this Section. Trimble may modify Documentation and Support Terms to reflect new features or changing practices, but the modifications will not materially decrease Trimble's overall obligations during a Term.

15.6 Waivers and Severability. Waivers must be in writing signed by the waiving party's authorized representative and cannot be implied from conduct. Each provision contained in this Agreement constitutes a separate and distinct provision severable from all other provisions. If any provision (or any part thereof) is unenforceable under or prohibited by any present or future law or is held by a court of competent jurisdiction or arbitrator to be invalid, void, or unenforceable, then such provision (or part thereof) will be amended, and is hereby amended, so as to be in compliance with such law, while preserving to the maximum extent possible the intent of the original provision. Any provision (or part thereof) that cannot be so amended will be severed from this Agreement; and, all the remaining provisions of this Agreement will remain unimpaired.

15.7 Force Majeure. Neither party is liable for any delay or failure to perform any obligation under this Agreement (except for a failure to pay Fees) due to events beyond its reasonable control, such as a strike, blockade, war, act of terrorism, riot, Internet or utility failures, refusal of government license, pandemics, or natural disaster.

15.8 Subcontractors. Trimble may use subcontractors and permit them to exercise Trimble's rights in connection with this Agreement, including for hosting purposes. Trimble remains responsible for compliance of any such subcontractors with this Agreement and for its overall performance under this Agreement.

15.9 Independent Contractors. The parties are independent contractors, not agents, partners, or joint venturers.

15.10 Export Restrictions. Customer acknowledges that the Products are subject to export restrictions by the United States government and import restrictions by certain foreign governments. Customer will not, and will not allow any third party to, remove or export from the United States or allow the export or re-export of any part of the Products or any direct product thereof: (i) into (or to a national or resident of) any embargoed or terrorist-supporting country; (ii) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (iii) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (iv) otherwise in violation of any export or import restrictions, Laws of any United States, or foreign agency or authority. Customer warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Products are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government. Customer will defend, indemnify, and hold Trimble harmless against any liability (including attorneys' fees) arising out of Customer's failure to comply with the terms of this Section. Customer's obligations under this Section will survive the termination of this Agreement for any reason whatsoever.

15.11 Anti-Corruption. Each party shall, and shall require that its officers, employees, and agents, (a) comply with all applicable anti-corruption and anti-bribery laws, including but not limited to the U.S. Foreign Corrupt Practices Act of 1997 and the U.K. Bribery Act 2010, each as amended and including any rules or regulations thereunder; (b) not directly or indirectly offer, promise, or give any person working for or engaged by the other party a financial or other advantage to induce that person to perform improperly a relevant function or activity or reward that person for improper performance of a relevant function or activity; and (c) not directly or indirectly request, agree to receive, or accept any financial or other advantage as an inducement or reward for improper performance of a relevant function or activity in connection with this Agreement.

15.12 Government End-Users. Elements of the Products are commercial computer software. If the user or licensee of the Products is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Products or any related documentation of any kind, including technical data and manuals, is restricted by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Products were developed fully at private expense. All other use is prohibited.

15.13 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies upon any third party except to the extent expressly set forth in this Agreement.

15.14 Governing Law, and Venue. The Agreement is governed exclusively by, and construed and enforced exclusively in accordance with, the laws of the applicable jurisdiction set forth in Exhibit A under "Governing Law" for the applicable Trimble entity without regard to or application of its conflicts of laws provisions and without regard to or application of the United Nations Convention on the International Sale of Goods. The parties agree that any legal proceeding arising out of or related to this Agreement will be subject to the sole and exclusive jurisdiction and venue set forth in Exhibit A under "Exclusive Venue/Jurisdiction," to the exclusion of all others. Each party irrevocably consents and hereby submits to the personal jurisdiction thereof.

15.15 Jury Trial Waiver. If the Agreement is governed by U.S. law, this Section applies. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL ACTION, PROCEEDING, CAUSE OF ACTION, OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, INCLUDING ANY EXHIBITS, SCHEDULES, AND APPENDICES ATTACHED TO THIS AGREEMENT, OR THE TRANSACTIONS CONTEMPLATED HEREBY.

EXHIBIT A

TRIMBLE NOTICE ADDRESS, GOVERNING LAW, AND VENUE/JURISDICTION

Trimble Entity and Notice Address*	**Governing Law**	**Exclusive Venue/Jurisdiction**
Trimble Inc. 935 Stewart Drive, Sunnyvale, CA 94085 United States AgileAssets Inc. 3001 Bee Caves Rd #200, Austin, TX 78746 Azteca Systems, LLC 11075 South State Street Suite 24 Sandy, UT 84070 e-Builder Inc. 13450 West Sunrise Blvd Suite 600, Sunrise, FL	Delaware	State of Delaware and United States federal courts located in Wilmington, Delaware
Trimble Europe B.V. Industrieweg 187a, 5683 CC, Best, The Netherlands	The Netherlands	Courts of Amsterdam

**See additional notice address for Trimble in Section 15.3 (Notices).*

EXHIBIT B

DEFINITIONS

"**Affiliate**" means an entity that, directly or indirectly, owns or controls, is owned or controlled by, or is under common ownership or control with a party, where "ownership" means the beneficial ownership of 50% or more of an entity's voting equity securities or other equivalent voting interests, and "control" means the power to direct the management or affairs of an entity.

"**Anonymized Data**" means any data collected in connection with the Products (including Customer Data) that has been aggregated and/or de-identified in such a manner that neither Customer nor any of its Authorized Users or any other individual can be identified from the data when it is shared outside of Trimble or its Affiliates.

"**Authorized User**" or "**User**" means any type of user authorized by Customer to access and use the Products on Customer's behalf, including any additional requirements as set forth in the Order or Supplemental Product Terms.

"**Concurrent User**" means any type of User authorized by Customer to access and use the Products on Customer's behalf simultaneously at a given point in time.

"**Customer Data**" means any information, documents, materials, or other data of any type that is input by or on behalf of Customer into the Products or that is created or generated by Customer through Customer's use of the Products, including without limitation information or data that is submitted manually by Authorized Users or through a Third-Party Platform.

"**Customer Group**" means, if applicable, Customer's business units, Affiliates, or Joint Ventures listed in the Order that are permitted to authorize Users to use the Products on behalf of those business units, Affiliates, or Joint Ventures.

"**Deliverables**" shall mean any Trimble deliverables as expressly set forth on a SOW.

"**Documentation**" means Trimble's then-current usage guidelines and standard technical documentation applicable to the Products.

"**High Risk Activities**" mean any mission critical, hazardous, strict liability, or other activity(ies) where use or failure of the Products could lead to death, personal injury, or physical or environmental damage. Examples of High Risk Activities include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, autonomous vehicles, air traffic control, emergency services, or weaponry systems. High Risk Activities do not include utilization of Products for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.

"**Joint Venture**" means a business arrangement in which Customer and one or more other third parties agree to pool their resources to accomplish a Project or other commercial enterprise.

"**Law(s)**" means all applicable local, state, federal, and international laws, regulations, and conventions, including those related to data privacy and data transfer, international communications, and export of technical or personal data.

"**License Keys**" means electronic passwords or other enabling mechanisms provided for use with a Product.

"**Licensed Software**" means the object code form of Trimble's proprietary installed software product, as identified in the relevant Order. The Licensed Software includes the Documentation, and any maintenance releases of the same Licensed Software product provided by Trimble to Customer under this Agreement, and optional software component module(s) that provides specific features and functionality enhancements for the Licensed Software not available in the standard configuration of the Licensed Software. Licensed Software does not include Third-Party Materials or Third-Party Platforms.

"**Named User**" means any type of User designated by Customer by name or other identifier to access and use the Products on Customer's behalf.

"**Order**" means (a) any ordering documents, proposals, quotations, sales agreement, or similar documents issued by Trimble or executed by Customer or (b) any Trimble-issued entitlement confirmation or online order acknowledgement.

"**Product(s)**" means the applicable Licensed Software or Software-as-a-Service offerings listed on an Order, including any platforms, add-on, integrations, service, or products provided or sold by Trimble with any of the foregoing.

"**Professional Services**" means any training, enablement, configuration, or other professional consulting services provided by Trimble related to the Products, as identified in the Order or SOW.

“**Prohibited Data**” means any (a) patient, medical, or other protected health information regulated by the Health Insurance Portability and Accountability Act (as amended and supplemented) (“**HIPAA**”); (b) credit, debit, or other payment card data subject to the Payment Card Industry Data Security Standards (PCI DSS); or (c) information subject to regulation or protection under the Children’s Online Privacy Protection Act or Gramm-Leach Bliley Act.

“**Software-as-a-Service**” means a Trimble proprietary cloud service, any Product available through a software-as-a-service, or other hosting services deployment model, as identified in the relevant Order and as modified from time to time. This includes Documentation, but does not include Third-Party Materials or Third-Party Platforms not provided by Trimble.

“**Third-Party Materials**” means any third-party data, content, or proprietary software.

“**Third-Party Platform**” means any platform, add-on, service, or product not provided by Trimble that Customer elects to integrate or enable for use with the Products, including any Trimble-approved Third-Party Platforms that Trimble may host on behalf of Customer.

“**Usage Limitations**” means Customer’s authorized scope of use for the Products as specified in the applicable Order or Supplemental Product Terms, which may include any user, seat, copy, instance, data storage, CPU, computer, field of use, location, or other restrictions.

EXHIBIT C

PROFESSIONAL SERVICE TERMS

1. Statements of Work. If purchased by Customer, Trimble or its authorized service providers will use commercially reasonable efforts to provide Professional Services to Customer described in an Order or SOW by the delivery dates specified therein, if any, or on a mutually agreeable schedule. Any changes in scope must be made in writing and approved by authorized representatives of Customer and Trimble.

2. Customer Materials. Customer agrees to provide Trimble with reasonable access to Customer's technical data, computer programs, files, documentation, and/or other materials (collectively, "**Customer Materials**") and to Customer's resources, personnel, equipment, and facilities to the extent necessary for the performance of Professional Services. Client will be responsible for, and assumes the risk of any problems resulting from the content, accuracy, completeness, competence, or consistency of Customer Materials or its personnel. To the extent that Customer does not timely provide the foregoing access required for Trimble to perform the Professional Services, Trimble shall be excused from performance until such items or access are provided. Subject to the confidentiality provisions of this Agreement, Customer hereby grants Trimble a limited and revocable right to use the Customer Materials for the purpose of performing the Professional Services for Customer. Customer owns and will retain ownership (including all intellectual property rights) in the Customer Materials.

3. Customer Premises. Customer shall provide Trimble with safe access to Customer's premises as reasonably required for Trimble to perform the Professional Services, if onsite performance of Professional Services is needed and agreed to by Customer. Trimble personnel shall comply with the reasonable written rules and regulations of Customer related to use of its premises, provided that such written rules and regulations are provided to Trimble prior to commencement of the Professional Services.

4. Deliverables. Trimble hereby grants Customer worldwide, royalty-free, non-exclusive license to use the Deliverables for its internal business purposes in connection with the Products associated with such Deliverables and only for the period of time that Customer has a license or subscription to such Products. Unless expressly stated otherwise in the applicable SOW, Trimble owns and will retain ownership (including all intellectual property rights) in and to the Deliverables (excluding any Customer Materials) and any modifications, improvements, and derivative works thereof (including any such materials to the extent incorporating any Feedback). If the parties have agreed that Trimble will assign ownership of Deliverables to Customer, the relevant SOW must set forth the terms and conditions regarding such assignment.

5. Services Warranty. Trimble will perform the Professional Services and deliver the Deliverables as scoped in an Order or SOW in a professional and workmanlike manner. If notified of a non-conformity within 10 days of delivery of the applicable Professional Services or Deliverables, and if Customer provides a sufficiently detailed justification to Trimble to allow Trimble to identify the non-confirming Professional Services or Deliverables, Trimble will, as its sole liability and obligation for failure to provide Professional Services or Deliverables meeting this warranty, re-perform the non-conforming Professional Services or re-deliver the non-conforming Deliverables at no additional cost to Customer.

6. Travel Expenses. Trimble will invoice Customer for reasonable out-of-pocket travel expenses incurred in connection with performing Professional Services. Expenses may include, but are not limited to, airfare and other transportation, lodging, and incidentals. Expenses may also include meals reimbursable per a flat per diem rate, available upon request. Expenses will be invoiced monthly as incurred at Trimble's cost (except per diem), and may be invoiced separately from Fees. For Professional Services performed onsite at Customer's premises, Trimble may invoice Customer for its consultants' time spent traveling to and from Customer's premises if set forth in the SOW.

Addendum #2

Supplemental Product Terms

1. **Intellectual Property Indemnification.**

   (a) Indemnification by Trimble. Trimble shall defend Customer from and against any claim of infringement of a U.S. patent, U.S. copyright, or U.S. trademark asserted against Customer by a third party based upon Customer's use of the Products in accordance with the terms of this Agreement, and pay any resulting settlement or final judgment. If Customer's use of any of the Products are, or in Trimble's opinion are likely to be, enjoined due to the type of infringement specified above, or if required by settlement, Trimble may, in its sole discretion: (a) substitute for the Products substantially functionally similar programs and documentation; (b) procure for Customer the right to continue using the Products; or if (a) and (b) are commercially impracticable, (c) terminate the Agreement and refund to Customer the fee paid by Customer as reduced to reflect a five year straight-line depreciation from the applicable purchase date. The foregoing indemnification obligation of Trimble will not apply: (1) if the Products are modified by any party other than Trimble; (2) if the Products are combined with other non-Trimble products, but solely to the extent that the alleged infringement is caused by such combination; (3) to any unauthorized use of the Products; (4) to any unsupported release of the Products; or (5) to any third-party code, content, and/or data contained in and/or delivered with the Products.

   (b) Indemnification Process. Trimble's indemnification obligations are contingent upon receipt of: (i) prompt notice of such claim (but in any event notice in sufficient time for the indemnifying party to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation of Customer.

   (c) THIS ADDENDUM #2 OF THE SUPPLEMENTAL PRODUCT TERMS SETS FORTH TRIMBLE'S AND ITS SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT AND/OR MISAPPROPRIATION.

2. **Roadmap Disclaimer. CUSTOMER AGREES THAT ITS PURCHASES ARE NOT CONTINGENT ON THE DELIVERY OF ANY FUTURE FUNCTIONALITY OR FEATURES, OR DEPENDENT ON ANY ORAL OR WRITTEN PUBLIC COMMENTS MADE BY TRIMBLE REGARDING FUTURE FUNCTIONALITY OR FEATURES.**

3. **Public Entity.** To the extent Customer is a public or governmental entity, then the following provisions apply to the extent applicable:

   a. **Tax Exemption.** If Customer is a tax exempt entity and provides evidence of a tax-exempt certificate prior to executing this Agreement, then Section 8.4 (Taxes) of the Agreement shall be inapplicable.

   b. **No Indemnification by Customer.** Section 12 (Indemnification) of the Agreement and the second to last sentence of Section 15.10 (Export Restrictions) of the Agreement shall be inapplicable.

   c. **Public Records Law.** Customer's confidentiality obligations in Section 13 (Confidentiality) of the Agreement may be subject to applicable public records law.

   d. **Limited Publicity.** The second sentence of Section 14 (Publicity) of the Agreement shall be inapplicable.

   e. **Termination for Convenience**. Customer may terminate this Agreement for convenience on not less than sixty (60) days' written notice to Trimble. If Customer terminates this Agreement under this paragraph, all fees properly due, but not paid, shall immediately become due and payable. All previously paid fees (both used and unused) for the current Term shall be non-refundable and forfeited. Furthermore, all earned, but unpaid, fees for Professional Services must be paid in full before the termination becomes effective.

   f. **Non-Appropriation of Funds.** The Customer's funds for future and ongoing purchases are contingent on the availability of future appropriations of funds. If funds are not appropriated for any payments due under this Agreement, the Customer will promptly notify Trimble in writing and the applicable Order will terminate as of the date of the notice in accordance with paragraph (e) above and the Customer will have no further obligation to make any payments with respect to the affected Order, provided however that the Customer shall pay for any goods or services ordered prior to the date of the Customer's notice.

g. **Piggyback.** Trimble does business with many government entities whose applicable laws permit them to join an existing contract between another governmental agency and vendor to acquire goods and services thereunder. In such circumstances and if allowable by applicable law and contract, Customer expressly agrees to allow the other governmental agencies to acquire goods and services using this Agreement ("piggyback"), subject to applicable pricing of the Trimble offerings at the time of the piggyback purchase.

h. **Governing Law**. Notwithstanding Section 15.14 (Governing Law, and Venue) of the Agreement, the Laws of the jurisdiction required by applicable law shall exclusively govern this Agreement.

4. **Post-Termination.** Upon expiration or termination of the Agreement, Customer will (i) stop accessing and using affected Product(s); (ii) clear any client-side data cache derived from use of the Product(s); and (iii) uninstall, remove, and destroy all copies of affected Product(s) in Licensee's possession or control, including any modified or merged portions thereof, in any form, and execute and deliver evidence of such actions to Trimble. Upon termination of the License and Maintenance Agreement, all Product licenses granted hereunder terminate as well. For 30 days from the expiration or termination of the Agreement, Trimble will make Customer Data available to Customer upon request for export or download for the applicable Product. Additional fees may apply.

5. **Consultant or Contractor Access.** Trimble grants Customer the right to permit Customer's Third-Party Consultants or Contractors to use the Products exclusively and solely for Customer's benefit. Customer must comply with terms and provisions of Exhibit A of Addendum 2 and provide an executed copy to Trimble. Customer shall be solely responsible for compliance by Third-Party Consultants and Contractors with this Agreement and shall ensure that the Third-Party Consultant or Contractor discontinues Product use upon completion of work for Customer. Access to or use of Products by Third-Party Consultants or Contractors not exclusively for Customer's benefit is prohibited.

EXHIBIT A OF ADDENDUM 2

THIRD-PARTY CONSULTANT/CONTRACTOR ACKNOWLEDGMENT

If Customer engages any third party or contractor (Third Party) and desires to grant access to use the Products, the access may be granted subject to the following terms conditions and provisions:

1. Access and use of the Licensed Products by Third Party is solely for Customer's benefit;
2. Third Party (or, if applicable, its employee) shall be considered the Authorized User, and all use shall be in accordance with the terms and conditions of the Trimble Agreement with Customer;
3. Before accessing the Products, Third Party agrees that (i) the Products shall be used solely in accordance with the terms of this Agreement, and (ii) Third Party shall be liable to Trimble for any breach by it of this Agreement;
4. Customer hereby agrees and acknowledges that Customer will be responsible for all use by Third Party with respect to the use of the Products;
5. Upon expiration or termination of this Agreement, the rights of usage of Third Party shall immediately terminated;
6. Use of the Products by Third Party will be governed by the terms of Customer's Agreement with Trimble, and will require that Customer purchase the appropriate license or access for each user utilized by Third Party; and
7. Customer will ensure that Third-Party agrees to comply with and does comply with the terms of Customer's Trimble Agreement on the same basis as the terms apply to Customer.

The rights granted under Third-Party Contractor Addendum, do not modify Customer's Agreement with Trimble or increase the access or licenses granted under this Agreement. Third Party, by their signature below, acknowledges that it has a copy of Customer's Agreement with Trimble and agrees to the terms herein. Customer shall provide a signed copy of this Agreement to Trimble at contracts@cityworks.com.

Customer: **Lakeland, TN**

Third Party (Print):__________________________

By: ____

Third Party/Contractor Authorized Signature

Title: ______________________________

Date: _________________________

Third Party Information:

Address City, State, Zip	
Contact Name	
Phone Number	
Email	

<u>Addendum #3</u>

<u>[Inserted on next page]</u>

Support

Version 1.0

1. Releases

1.1. <u>General</u>. "**Release**" means an update or upgrade to the Product made available to all customers using that Product that improves usability or adds functionality, cosmetic changes, or bug fixes. Trimble will use commercially reasonable efforts to provide prior notice to Customer through the Customer Portal, or other communication channels when Releases are made generally available to all customers, excluding any non-general Releases or unplanned Releases. Trimble will decide the contents and timing of all Releases in its sole discretion.

1.2. <u>Software-as-a-Service and Hosted License Software</u>. Trimble will update (i) Software-as-a-Service or (ii) Licensed Software hosted by Trimble in each case as new Releases become generally available.

1.3. <u>On Premise Licensed Software</u>. For Licensed Software not hosted by Trimble, Customer is responsible for installing all Releases. Upon Customer's election to install a Release, Customer agrees to cease all use of the prior version of the Licensed Software and destroy all copies. Releases may require Customer to update third party software, hardware, or operating systems at Customer's expense.

2. Support

2.1. <u>Generally.</u>

a) Trimble shall use the applicable level of effort to correct or provide a workaround for any reproducible error in the Product attributable to Trimble commensurate with the severity of the error, as reasonably determined by Trimble in accordance with Section 2.3 below.

b) For certain Products as set forth in Section 2.2(a) below, Trimble may provide a customer support portal (the "**Support Portal**"), which may allow Customer to submit support requests, report issues, view case histories, search the general knowledge database, and other features, as applicable. In the event of any conflicts between the terms set forth herein and any set forth in the applicable Support Portal, the terms herein shall govern.

c) For certain Products as set forth in Section 2.2(a) below, Trimble will provide support to Customer only by communication with the contacts designated by Customer in the Support Portal or otherwise as instructed by Trimble (each, a "**Authorized Support Contact**"). Customer may update Authorized Support Contact(s) from time to time as instructed by Trimble. Trimble may require the Authorized Support Contact(s) to have the relevant technical knowledge regarding the Products necessary to assist Trimble as needed.

d) Upon identification of any error that cannot be resolved by Customer as first line of support (e.g., via the Support Portal, its internal staff, etc.), then Customer (through its Authorized Support Contact(s)) shall promptly notify Trimble of such error and shall provide Trimble with enough information, assistance, and cooperation to reproduce the error, including a listing of output and any other data that Trimble may reasonably request in order to reproduce the error and operating conditions under which the error occurred or was discovered. Trimble shall not be responsible for correcting any errors not attributable to Trimble.

e) For certain Products, Trimble may provide additional or different support services or procedures as set forth in the applicable documentation, support handbook, or other written documentation provided by Trimble, if any (the "**Additional Support Documentation**"). If there is any conflict between these support terms and such Additional Support Documentation with respect to the description of support services or procedures, the provisions of such Additional Support Documentation will prevail. Trimble may use third-parties to provide support and maintenance services on its behalf. Customer expressly consents to Trimble permitting such third parties to access Customer information and data to perform the support services.

2.2. Reporting; Availability

a) Support portals and general availability is described below.

Product	Support Portal*	Authorized Support Contacts Only?**
AgileAssets	https://agileassets.com/techsupport	Yes
Cityworks	https:mycityworks.force.com	Yes
e-Builder (non-Fed Ramp)	https://www.e-builder.net/customer-center	No
e-Builder (Fed Ramp)	Support information available upon request.	Yes
Trimble Water	https://mytrimblewater.force.com/s/login	No

** Additional phone numbers and hours of availability for contacting Trimble with support requests may be listed in the Support Portal.*

2.3. Severity Priority Levels. As soon as reasonably practicable after Customer submits the relevant case information, Trimble will collect additional information and categorize the issue into one of four classifications as set forth below in good faith. Upon Customer submission of the case information, Trimble will use commercially reasonable efforts to issue a Response (as defined below) by the indicated target response goal set forth below. Once the priority level is determined, Trimble will use the level of effort for resolution described below.

Priority Level*	Priority Criteria	Target Response Goal**	Level of Effort for Resolution
P1	most urgent and impactful	½ hour	Trimble and Customer will prioritize any reasonably available resources to resolve the situation or identify a work around.
P2	urgent and impactful, but usually has an acceptable temporary workaround	½ hour	Trimble and Customer will prioritize any reasonably available resources during standard business hours to resolve the situation or identify a work around.
P3	important, but not urgent and impactful	4 hrs	Trimble and Customer will use generally available resources during standard business hours to resolve the situation or identify a work around.
P4	a low priority, informational, or an enhancement request	24 hrs	Trimble and Customer are willing to use generally available resources during standard business hours to provide information or assistance.

** See Priority Matrix and definitions below. The main factors in determining priority level are urgency and impact. Trimble will also consider in good faith any additional relevant facts and circumstances in consultation with Customer that may result in a mutually agreed upon change in priority level.*

*** The use of the term "hour(s)" refers to business hours based on Trimble's regular business schedule, and excludes nights, weekends and locally-observed holidays (e.g., 24 hrs equals 3 business days at 8 hrs a day). "Response" means acknowledgment of the issue via the creation of a case number. Determination of priority level will occur as soon as practicable thereafter.*

Priority matrix					
		Impact			
		Widespread	**Large**	**Localized**	**Individualized**
Urgency	**Critical**	P1	P1	P2	P2
	High	P1	P2	P2	P3
	Medium	P2	P3	P3	P3
	Low	P4	P4	P4	P4

Definitions		
Impact	Impact is a measure of the number of users, sites, or devices affected.	**Widespread**. More than three quarters of users or devices are affected.
		Large. (1) Multiple sites are affected or (2) between one-half and three-quarters of users or devices are affected.
		Localized. (1) A single site is affected or (2) less than one half of users or devices are affected.
		Individualized. A single or a small number of users or devices are affected.
Urgency	Urgency is a measure of the severity of the issue on the Customer's operations.	**Critical**. Use of Product as a whole or core functionality is stopped with no work around and with severe immediate impact to the Customer's operations (e.g., outage).
		High. Use of Product as a whole or core functionality is severely degraded or a work around is available, and with immediate impact to the Customer's operations.
		Medium. Use of Product or any functionality is not working as expected, and can be addressed through education, training, work around, work order, or a future enhancement.
		Low. All other requests that are not the above.

2.4. Limitations and Conditions.

(a) Unless otherwise expressly provided by Trimble in writing, Trimble does not support: (i) use of the Product in a manner other than as authorized in the Agreement; (ii) alterations of the Product by Customer or a third-party; (iii) conversions of Customer's databases to accommodate new hardware or software, (iv) Customer Data debugging or manipulation, (v) recurring support issues where Customer failed to initiate corrective actions previously recommended by Trimble or to provide information requested by Trimble, (vi) training, implementation, report creation, onsite support, customizations (e.g., scripting or integration), or assistance with server migrations are not included as part of Support, but such services but may be purchased separately, (vii) any Release of the Product other than the current and an immediately preceding Release unless covered under a separate agreement (this includes preview, beta, or candidate releases), (viii) Third-party Materials or Third-Party Platforms; (ix) any Products for which maintenance and/or support fees have not been paid, or (x) any Product where Customer has failed to meet its obligations with respect to the Agreement, including, without limitation, as set forth below.

(b) Customer must (i) require its personnel to obtain adequate training to operate the Product(s), (ii) if required by Trimble for the particular Product, designate Authorized Support Contacts who will submit all support cases to Trimble, (iii) provide internet and/or network access for Trimble when requesting support; and (iv) provide all information and assistance reasonably requested by Trimble related to the support request.

(c) For Licensed Software not hosted by Trimble, Customer is responsible for (i) securing the server environment, local network, and system security and protocols, including having staff qualified to assume responsibility for management administration and support for Customer's hardware, database, and any Third-Party Materials and/or Third-Party Platforms, (ii) maintaining regular and frequent data backups, and recovering such data if necessary from backups maintained by Customer, (iii) establishing a secure method of access to Customer's network as well as maintaining security protocols for Customer's network; and (iv) incorporating Releases and any associated data migration.

(d) If any Customer support request is subject to any of the foregoing, then Trimble reserves the right to impose support fees at its then standard commercial time and materials rates for all such services, including pre-approved travel and per diem expenses to be reimbursed consistent with Customer's policies. Trimble will notify Customer in advance of incurring any such fees.

Addendum #4
Availability Service Level Agreement; Data Security and Restoration
Version 1.0

1. Availability Service Level Agreement

For any Product that is either (i) Software-as-a-Service or (ii) Licensed Software hosted by Trimble, the following will apply.

1. Target Availability. Trimble will use commercially reasonable efforts to make the Product available with an uptime availability (time periods during which Customer has general connectivity to the Product) (the "**Target Availability**") as follows:

Product	Target Availability*
Cityworks	99.9%*
AgileAssets / Pavement Express	99%
e-Builder	99.95%
Trimble Water - Trimble Unity Work Management/ Trimble Unity Remote Monitoring	99.5%

**Target Availability is generally for a calendar month; provided that Cityworks target availability will be calculated on a quarterly basis.*

0. Exclusions. The calculation of uptime will not include unavailability to the extent due to: (a) Customer's use of the Product in a manner not authorized in the Agreement or Documentation, (b) general Internet problems, force majeure events or other factors outside of Trimble's reasonable control, including without limitation interruption or failure of telecommunications or digital transmission links, hostile network attacks, network congestion, denial of service attack, (c) Customer's equipment, software, network connections or other infrastructure, (d) any acts or omissions of Customer or any third-party that is not a service provider of Trimble, (e) failure by Customer to pay any applicable fees under the Agreement, or (f) Scheduled Maintenance or emergency maintenance.

0. Scheduled Maintenance. "**Scheduled Maintenance**" means Trimble's scheduled, routine, or other maintenance which (1) occurs at such times as may be listed on Trimble's websites or Support Portal, or (2) Trimble notifies Customer with at least two (2) days advance notice, which can be via the Support Portal, e-mail, or in the Product. Trimble reserves the right to schedule other maintenance periods on an as needed basis and will notify Customer in advance. Trimble will use commercially reasonable efforts to perform Scheduled Maintenance during low usage times.

0. Service Credits. If there is a verified failure of the Products to meet Target Availability in a particular month and Customer makes a request for service credit within thirty (30) days after the end of such month, Customer will be entitled to a credit based on the monthly fees due for the affected Product in such month ("**Service Credit**"). The Service Credit will be calculated as follows:

*Service Credit = Pro Rata Fee * percentage of time that the Product did not meet the Target Availability*

The "**Pro Rata Fee**" means (1) for Target Availability measured monthly, one-twelfth of the total annual fee for the Product (excluding taxes, etc.), and (2) for Target Availability measured quarterly, one-fourth of the total annual fee for the Product (excluding taxes, etc). The Service Credit will be calculated to the nearest 30-minute interval. The total Service Credits in a month may not exceed 20% of the Monthly Fee.

Trimble will apply each Service Credit to Customer's next invoice, provided that Customer's account is fully paid up, without any outstanding payment issues or disputes. Customer will not receive any refunds for any unused Service Credits.

0. Sole Remedy. Service Credits constitute liquidated damages and are not a penalty. The Service Credits set forth in this Section are Customer's sole and exclusive remedy for any failure to meet the Target Availability.

0. Data Security and Restoration

1. Software-as-a-Service and Hosted License Software.
    1. Trimble or its third-party hosting provider(s) shall use commercially reasonable efforts to establish and maintain reasonable administrative, physical, and technical safeguards designed to (a) protect the security, confidentiality, and integrity of Customer Data, (b) protect against anticipated threats or hazards to the security,

confidentiality, and integrity of Customer Data; (c) protect against unauthorized access to or use of Customer Data; and (d) protect against unlawful processing, accidental destruction, or loss of Customer Data.

2. Trimble will use reasonable efforts to restore lost or damaged Customer Data for Products deployed through Trimble hosting services or as Software-as-a-Service, as described in this paragraph, if the loss or damage was caused by Trimble. Trimble will consult with Customer and provide information to Customer regarding the availability of backups and the potential limitations of data restoration. Customer understands that some data loss may result upon restoration based on the frequency and availability of backups. If Customer Data loss or damage is not caused by Trimble, Trimble will provide support and technical assistance for data restoration subject to Trimble's availability and payment of applicable fees at Trimble's then-current hourly rates.

On Premises Licensed Software. Trimble does not provide regular support or technical assistance for the repair or restoration of lost or damaged Customer Data as part of support for Licensed Software not hosted by Trimble, regardless of the cause. Assistance for restoration may be available subject to Trimble's availability and payment of applicable fees at Trimble's then-current hourly rates.

CITY OF
LAKELAND
TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - authorizing the City Manager to execute an agreement with True North Geographic Technologies, LLC for Cityworks and GIS hosting services.

Staff Contact: Josh Thompson, ITS Director

STAFF RECOMMENDATION

City Staff recommends the Board of Commissioners approve resolution R-96-2024.

BUDGET IMPACT

This expenditure is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund.

DISCUSSION

Currently, True North provides hosting services for two servers, a GIS server and a Cityworks server. During the next 3-6 months, the City will be transitioning to the Cityworks Online (CWOL) platform and when that is complete, our reliance on True North to host our Cityworks server will end. From that point forward, the costs will only include hosting services for one server for GIS applications and data storage.

RESOLUTION R-96-2024

AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH TRUE NORTH GEOGRAPHIC TECHNOLOGIES, LLC FOR CITYWORKS AND GIS HOSTING SERVICES

WHEREAS, the City of Lakeland, Tennessee, (the "City") desires hosting services for Cityworks and GIS platforms; and,

WHEREAS, True North Geographic Technologies, LLC offers Cityworks and GIS hosting services; and,

WHEREAS, funding for this purchase is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Manager is hereby authorized to execute an agreement, subject to City Attorney review, not to exceed an amount of eighteen thousand six hundred dollars ($18,600).

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 18th day of July 2024, the public welfare requiring it.

ATTEST:

______________________	______________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

City of Lakeland, Tennessee

Cityworks & GIS Server Hosting and Support

Prepared for:
Josh Thompson, ITS Director
City of Lakeland
10001 Hwy 70
Lakeland, TN
901.867.2717

Prepared by:
True North Geographic Technologies LLC
119 MTCS Road
Murfreesboro, TN 37129
Ph: 615-890-7728

June 28, 2024

Executive Summary

True North Geographic Technologies (True North) is pleased to provide this proposal to the City of Lakeland (Lakeland) for continued Cityworks and GIS Server Hosting and Support. The scope of this hosting agreement includes maintaining the cloud servers running Cityworks and ArcGIS Enterprise and monthly support to maintain optimum server performance. The environment can scale to accommodate growth and will promote Esri, Cityworks and IT best-practices.

Proposal Details

Two options are offered in this proposal:

- Option 1 - Includes one GIS server and one Cityworks server. This is the current system architecture.
- Option 2 – Includes one GIS server.

Both Option 1 and Option 2 include 5 hours of technical support per month from True North for server administration. This typically includes performance tuning, routine maintenance and installing software upgrades and patches. Any unused support hours carry over to the next month. At any time during the hosting term, Lakeland can move from Option 1 to Option 2 by providing written notice to True North.

Professional Services and Additional Support

Professional services for Cityworks, GIS and IT support can be obtained through a Master Services Agreement (document provided separately). Professional services projects are initiated with task orders that include a defined scope of work and budget. Additional support can include assisting end-users with Esri and Cityworks software questions, updating templates, automating workflows, and creating new services, maps and applications.

Key Assumptions:

- Lakeland will maintain adequate internet bandwidth to support working with the hosted environment.
- Lakeland will maintain Cityworks and Esri license agreements.
- Lakeland staff will pursue appropriate Esri and Cityworks training (as needed) to supplement current knowledge.
- Lakeland will obtain the security certificates for the servers.
- The term of this agreement is from July 1, 2024, through June 30, 2025 (hosting and support) and can be extended as directed by Lakeland.

Agreement

The City of Lakeland accepts this proposal dated June 28, 2024, for Cityworks and GIS Server Hosting and Support. Option 1 is the current configuration. At any time, Lakeland can move from Option 1 to Option 2 by providing written notice to True North.

Hosted Server Options	Description	Month	Quarter	Year
Option 1	Two Servers (5 hours per month support)	$1,800	$5,400	$21,600
Option 2	Single Server (5 hours per month support)	$1,300	$3,900	$15,600

The hosting term is from July 1, 2024, through June 30, 2025.

CUSTOMER

True North Geographic Technologies LLC

____
Customer Name

____
True North Representative

____
Address 1

_______/_______/_______
Date

____
Address 2

____
City/State/Zip

____
Authorized Signature

____
Printed Name

_______/_______/_______
Date

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - authorizing the City Manager to execute a professional services engagement letter with Bass, Berry & Sims PLC for general legal advice and/or representation pertaining to matters of public finance and economic development.

Staff Contact: Michael Walker, City Manager

STAFF RECOMMENDATION

City Staff recommends that the Board of Commissioners approve resolution R-97-2024.

BUDGET IMPACT

Legal services, as well as an allowance for any closing costs related to debt issuance, are included in the original budget for fiscal year 2025.

DISCUSSION

Michael Bradshaw, attorney, has long served as the City of Lakeland's bond counsel in matters related to debt issuance, tax exempt status of such, and closings and bond counsel opinions related to Lakeland's activities. Mr. Bradshaw recently joined the firm of Bass, Berry & Sims PLC (the same firm the Lakeland IDB uses for the IDB attorney). This engagement letter allows the City to continue to use institutional Lakeland knowledge with Mr. Bradshaw's new firm.

RESOLUTION R-97-2024

AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES ENGAGEMENT LETTER WITH BASS, BERRY & SIMS PLC FOR GENERAL LEGAL ADVICE AND/OR REPRESENTATION PERTAINING TO MATTERS OF PUBLIC FINANCE AND ECONOMIC DEVELOPMENT

WHEREAS, the City of Lakeland, Tennessee, (the "City") desires to ensure experienced and qualified legal counsel represents the City related to public finance and economic development; and,

WHEREAS, funding for these legal services is appropriated in the Fiscal Year 2025 Annual Budget for the General Fund and the Debt Service Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Manager is hereby authorized to execute an engagement letter (Exhibit A) with Bass, Berry & Sims PLC for general legal advice and/or representation pertaining to matters of public finance and economic development.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 18th day of July 2024, the public welfare requiring it.

ATTEST:

______________________	______________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

BASS BERRY ✦ SIMS PLC

100 Peabody Place, Suite 1300
Memphis, TN 38103
(901) 543-5900

July 18, 2024

VIA EMAIL

City of Lakeland, Tennessee
Attention: Michael Walker, City Manager
10001 Hwy 70
Lakeland, Tennessee 38002
mwalker@lakelandtn.org

Re: Engagement for general legal advice and/or representation pertaining to matters of public finance and economic development

Dear Michael:

The purpose of this engagement letter is to set forth certain matters concerning the services Bass, Berry & Sims PLC (the "Firm") will perform as counsel to the City of Lakeland, Tennessee (the "City"), in connection with general advice, consultation and representation on bond, tax, economic development and other financial related matters relating to the City, other than specific transactions for which we serve and bond and/or disclosure counsel for the City, in which case we would enter into a separate engagement.

For these matters, the Firm shall be compensated at the following hourly rates: members and counsel = $375/hour, associate attorneys = $275/hour and paralegals = $135/hour; provided that for advice and counsel on issues relating to section 103 of the Internal Revenue Code, Counsel shall be compensated at an hourly rate of $425/hour. We will send a monthly bill reflecting fees and expenses owing for the previous month. Our bills will be sent to City of Lakeland, Tennessee, 10001 Hwy 70, Lakeland, Tennessee 38002, Attention: Michael Walker, City Manager.

The term of this engagement shall commence beginning on the date hereof, and shall end on the earlier of December 31, 2024, or until either the City or the Firm otherwise elects to terminate this engagement ("Term").

Upon execution of this engagement letter, the City will be our client and an attorney-client relationship will exist between us.

Please note that, in our representation of the City, we will not act as a "municipal advisor", as such term is defined in the Securities Exchange Act of 1934.

As the City is aware, the Firm represents many political subdivisions, companies and individuals. During the time that the Firm is representing the City, the Firm's clients will have unrelated transactions with the City (including both transactions that are currently pending and those that will arise in the future). Such current and future transactions include, but are not limited to, PILOT applications, PILOT lease agreements, other PILOT related documents, tax increment financing applications and related documents, leases of various kinds, zoning and other land use matters and development matters, including development agreements and other incentive agreements. The Firm does not believe that any such representation will adversely affect the Firm's ability to represent the City as provided in this engagement, either because such matters will be sufficiently different from the City's public financings and disclosure matters so as to make such representations not adverse to the

Firm's representation of the City pursuant to this engagement, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the City's public financings and disclosure matters. Execution of this letter will signify the City's waiver of any potential conflict and ongoing consent to the Firm's representation of others in connection with the current and future matters described herein.

Without limiting the foregoing, the Firm represents Scott's Creek Development, Inc. in an unrelated matter adverse to you regarding Lakeland Meadows TIF. Because our pre-existing representation involves an adversity to you, a potential conflict of interest exists. We think that we may properly represent you in this matter, so long as both you and Scott's Creek Development, LLC waive the potential conflict of interest. Further, because our work for Scott's Creek Development, LLC pre-dated this work for you, we ask that you waive any potential conflict in our firm continuing to represent Scott's Creek Development, LLC in matters adverse to you. In the event that a dispute or litigation ever arose directly between you and Scott's Creek Development, LLC, the Firm may find it necessary to withdraw from its representation of you, since our representation of Scott's Creek Development, LLC preceded our representation of you and has been ongoing. If that occurs, we recommend you obtain separate counsel. Please know that during our representation of you, we would not disclose information obtained from you to Scott's Creek Development, LLC, nor would we share information obtained from Scott's Creek Development, LLC with you.

Additionally, the Firm represents Vincent D. Smith, Jr. in an unrelated matter adverse to you regarding Lakeland Town Center. Because our pre-existing representation involves an adversity to you, a potential conflict of interest exists. We think that we may properly represent you in this matter, so long as both you and Vincent D. Smith, Jr. waive the potential conflict of interest. Further, because our work for Vincent D. Smith, Jr. pre-dated this work for you, we ask that you waive any potential conflict in the Firm continuing to represent Vincent D. Smith, Jr. in matters adverse to you. In the event that a dispute or litigation ever arose directly between you and Vincent D. Smith, Jr., the firm may find it necessary to withdraw from its representation of you, since our representation of Vincent D. Smith, Jr. preceded our representation of you and has been ongoing. If that occurs, we recommend you obtain separate counsel. Please know that during our representation of you, we would not disclose information obtained from you to Vincent D. Smith, Jr., nor would we share information obtained from Vincent D. Smith, Jr. with you.

At your request, papers and property furnished by you will be returned promptly upon receipt of payment for outstanding fees and client charges. Our own files, including lawyer work product pertaining to the transaction, will be retained by us. For various reasons, including the minimization of unnecessary storage expenses, we reserve the right to dispose of any documents or other materials retained by us after the termination of this engagement.

If the foregoing terms of this engagement are acceptable to you please so indicate by returning the enclosed copy of this letter signed by an appropriate officer, retaining the original for your files

We look forward to working with you.

Sincerely,

Bass, Berry & Sims PLC

Accepted and Approved:

By:____________________________

Date:__________________________

45144825.1

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - authorizing the City Manager to execute a professional services engagement letter with Bass, Berry & Sims PLC for the issuance of general obligation bonds to the United States Department of Agriculture.

Staff Contact: Michael Walker, City Manager

STAFF RECOMMENDATION

City Staff recommends that the Board of Commissioners approve resolution R-99-2024.

BUDGET IMPACT

Funds for these professional services are allocated in the original fiscal year 2024 annual budget.

DISCUSSION

Michael Bradshaw, attorney, has long served as the City of Lakeland's bond counsel in matters related to debt issuance, tax exempt status of such, and closings and bond counsel opinions related to Lakeland's activities. Mr. Bradshaw recently joined the firm of Bass, Berry & Sims PLC (the same firm the Lakeland IDB uses for the IDB attorney). This engagement letter allows the City to continue to use institutional Lakeland knowledge with Mr. Bradshaw's new firm.

RESOLUTION R-99-2024

AUTHORIZING THE CITY MANAGER TO EXECUTE A PROFESSIONAL SERVICES ENGAGEMENT LETTER WITH BASS, BERRY & SIMS PLC FOR THE ISSUANCE OF GENERAL OBLIGATION BONDS TO THE UNITED STATES DEPARTMENT OF AGRICULTURE

WHEREAS, the City of Lakeland, Tennessee, (the "City") desires to ensure experienced and qualified legal counsel represents the City related to the issuance of general obligation bonds to the United States Department of Agriculture; and,

WHEREAS, funding for these legal services is appropriated in the Fiscal Year 2025 Annual Budget for the Debt Service Fund:

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Manager is hereby authorized to execute an engagement letter (Exhibit A) with Bass, Berry & Sims PLC for legal counsel related to the issuance of general obligation bonds to the United States Department of Agriculture.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 18th day of July 2024, the public welfare requiring it.

ATTEST:

________________________	________________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

BASS BERRY ✦ SIMS PLC

Michael J. Bradshaw Jr.
Michael.bradshaw@bassberry.com
901-543-5781

July 18, 2024

City of Lakeland, Tennessee
Attn: Michael Walker, City Manager
10001 Highway 70
Lakeland, TN 38002
citymanager@lakelandtn.org

Re: Issuance of General Obligation Bond to the United States Department of Agriculture ("USDA")

Ladies and Gentlemen:

The purpose of this engagement letter is to set forth certain matters concerning the services we will perform as bond counsel to the City of Lakeland, Tennessee (the "Issuer"), in connection with the issuance of the captioned bond (the "Bond"). We understand that the Bond will be issued for the purpose of providing funds necessary to finance a community recreation center as described in the Letter of Conditions, as may be further amended from time to time. We also understand that the Issuer may issue bond anticipation notes ("Notes") to fund project costs incurred prior to the issuance of the Bond.

As bond counsel, we expect to perform the following duties:

1. Subject to the completion of proceedings to our satisfaction, render our legal opinion (the "Bond Opinion") regarding the validity and binding effect of the Notes and the Bond, the source of payment and security for the Notes and the Bond, and the excludability of interest on the Notes and the Bond from gross income for federal income tax purposes, if applicable.

2. Prepare and review documents necessary or appropriate for the authorization, issuance and delivery of the Notes and the Bond, coordinate the authorization and execution of such documents, and review enabling legislation.

3. Assist the Issuer in seeking from other governmental authorities such approvals, permissions and exemptions as we determine are necessary or appropriate in connection with the authorization, issuance, and delivery of the Notes and the Bond.

4. Review legal issues relating to the structure of the Notes and the Bond.

Our Bond Opinion will be addressed to the Issuer and the purchaser of the Notes or USDA, as applicable, and will be delivered by us on the dates that the Notes and the Bond are exchanged for their respective purchase prices (each, a "Closing").

The Bond Opinion will be based on facts and law existing as of its date. In rendering our Bond Opinion, we will rely upon the certified proceedings and other certifications of public officials and other persons furnished to us without undertaking to verify the same by independent investigation, and we will assume continuing compliance by the Issuer with applicable laws relating to the Notes and the Bond. During the course of this engagement, we will rely on you to provide us with complete and timely information on all developments pertaining to any aspect of the Notes and the Bond and their security.

Our duties in this engagement are limited to those expressly set forth above. Among other things, our duties do not include:

a. Preparing requests for tax rulings from the Internal Revenue Service.

b. Drafting state constitutional or legislative amendments.

c. Pursuing test cases or other litigation (such as contested validation proceedings), except as set forth above.

d. Making an investigation or expressing any view as to the creditworthiness of the Issuer or the Notes and the Bond.

e. Except for defending our Bond Opinion, representing the Issuer in Internal Revenue Service examinations or inquiries.

f. After Closing, providing continuing advice to the Issuer or any other party concerning any actions necessary to assure that interest paid on the Notes and the Bond will continue to be excludable from gross income for federal income tax purposes (e.g., our engagement does not include rebate calculations for the Notes and the Bond).

g. Addressing any other matter not specifically set forth above that is not required to render our Bond Opinion.

Upon execution of this engagement letter, the Issuer will be our client and an attorney-client relationship will exist between us. We assume that all other parties will retain such counsel as they deem necessary and appropriate to represent their interests in this transaction. We further assume that all other parties understand that in this transaction we represent only the Issuer, we are not counsel to any other party, and we are not acting as an intermediary among the parties. Our services as bond counsel are limited to those contracted for in this letter; the Issuer's execution of this engagement letter will constitute an acknowledgment of those limitations.

Our representation of the Issuer and the attorney-client relationship created by this engagement letter will be concluded upon issuance of the Bond. Nevertheless, subsequent to Closing, we will mail the appropriate Internal Revenue Service Form 8038, if applicable, and prepare and distribute to the participants in the transaction a transcript of the proceedings pertaining to the Bond.

Our firm does not represent the USDA. However, our firm represents many political subdivisions, companies and individuals. It is possible that during the time that we are representing the Issuer, one or more of our present or future clients will have transactions with the Issuer. It is also possible that we may be asked to represent, in an unrelated matter, one or more of the entities involved in the issuance of the Notes or the Bond. As an example, it is possible that the financial institution that you select to purchase the Notes may be a client of the firm in unrelated matters. We do not believe representations of this type will adversely affect our ability to represent you as provided in this letter, either because such matters will be sufficiently different from the issuance of the Bond so as to make such representations not adverse to our representation of you, or because the potential for such adversity is remote or minor and outweighed by the consideration that it is unlikely that advice given to the other client will be relevant to any aspect of the issuance of the Notes or Bond. Execution of this letter will signify the Issuer's consent to this representation and our representation of others consistent with the circumstances described in this paragraph.

Without limiting the foregoing, our firm represents Scott's Creek Development, Inc. in an unrelated matter adverse to you regarding Lakeland Meadows TIF. Because our pre-existing representation involves an adversity to you, a potential conflict of interest exists. We think that our firm may properly represent you in this matter, so long as both you and Scott's Creek Development, LLC waive the potential conflict of interest. Further, because our work for Scott's Creek Development, LLC pre-dated this work for you, we ask that you waive any potential conflict in our firm continuing to represent Scott's Creek Development, LLC in matters adverse to you. In the event that a dispute or litigation ever arose directly between you and Scott's Creek Development, LLC, the firm may find it necessary to withdraw from its representation of you, since our representation of Scott's Creek Development, LLC preceded our representation of you and has been ongoing. If that occurs, we recommend you obtain separate counsel. Please know that during our representation of you, we would not disclose information obtained from you to Scott's Creek Development, LLC, nor would we share information obtained from Scott's Creek Development, LLC with you.

Additionally, our firm represents Vincent D. Smith, Jr. in an unrelated matter adverse to you regarding Lakeland Town Center. Because our pre-existing representation involves an adversity to you, a potential conflict of interest exists. We think that we may properly represent you in this matter, so long as both you and Vincent D. Smith, Jr. waive the potential conflict of interest. Further, because our work for Vincent D. Smith, Jr. pre-dated this work for you, we ask that you waive any potential conflict in our firm continuing to represent Vincent D. Smith, Jr. in matters adverse to you. In the event that a dispute or litigation ever arose directly between you and Vincent D. Smith, Jr., the firm may find it necessary to withdraw from its representation of you, since our representation of Vincent D. Smith, Jr. preceded our representation of you and has been ongoing. If that occurs, we recommend you obtain separate counsel. Please know that during our representation of you, we would not disclose information obtained from you to Vincent D. Smith, Jr., nor would we share information obtained from Vincent D. Smith, Jr. with you.

Based upon: (i) our current understanding of the terms, structure, size and schedule of the financing represented by the Notes and the Bond; (ii) the duties we will undertake pursuant to this engagement letter; (iii) the time we anticipate devoting to the financing; and (iv) the responsibilities we will assume in connection therewith, our fee will be $40,000. The fees quoted above will include all out-of-pocket expenses advanced for your benefit, such as travel costs, photocopying, deliveries, long distance telephone charges, telecopier charges, filing fees, computer-assisted research and other expenses. We understand and agree that 80% of our fees will be paid at the Closing of the issuance of the Notes, with the balance being paid at the Closing of the issuance of the Bond. If no financing is consummated, we understand and agree that we will not be paid.

Michael Bradshaw and Alex Samber will serve as the primary contact for this engagement.

Unless we receive notification to the contrary, we will proceed with our representation as bond counsel and the preparation of necessary documentation.

We look forward to working with you.

Very truly yours,

BASS, BERRY & SIMS PLC

Accepted and Approved:

CITY OF LAKELAND, TENNESSEE

By:______________________________
City Manager

Date:_______________, 2024

cc: Will Patterson, via WPatterson@pattersonbray.com
Counsel to the Issuer

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - authorizing expense reimbursements for the Board of Commissioners.

Staff Contact: Michael Walker, City Manager

STAFF RECOMMENDATION
City Staff recommends that the Board of Commissioners approve resolution R-100-2024.

BUDGET IMPACT
Funds for these expense reimbursements are appropriated in the fiscal year 2025 annual budget (via budget transfers).

DISCUSSION
Each City of Lakeland employee utilizing personal telecommunications devices (i.e. mobile phones) to conduct City business are reimbursed monthly a stipend of $60 for such business use. City Staff recognizes that each member of the BOC also utilizes their personal telecommunications device for business use as well, and such business expense should be therefore reimbursed.

RESOLUTION R-100-2024

AUTHORIZING EXPENSE REIMBURSEMENTS FOR THE BOARD OF COMMISSIONERS

WHEREAS, the City of Lakeland, Tennessee, (the "City") desires to ensure that elected officials utilizing telecommunications services for City business are reimbursed for such business use; and,

WHEREAS, funding for these expenses are appropriated in the Fiscal Year 2025 Annual Budget for General Fund (via budget transfers):

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Manager is hereby authorized to reimburse the Mayor, Vice Mayor, and each Commissioner sixty dollars ($60) per month for the business use of each person's personal telecommunications services.

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 18th day of July 2024, the public welfare requiring it.

ATTEST:

__________________________	__________________________
Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

CITY OF LAKELAND TENNESSEE

Board of Commissioners

Meeting Cycle: Thursday, July 18, 2024

Subject: **Resolution** - authorizing payment to the Lakeland School System for a portion of the cost of a temporary traffic signal at Highway 70 and Seed Tick Road. *Sponsored by Commissioner Wright*

Staff Contact: Michael Walker, City Manager

STAFF RECOMMENDATION
City Staff recommends the Board of Commissioners approve resolution R-101-2024.

BUDGET IMPACT
The cost of this payment to LSS is not appropriated in the fiscal year 2025 annual budget; however, as the fiscal year progresses this transfer out to LSS will be budgeted via budget transfers and/or amendment.

DISCUSSION
Please see the attached email from Dr. Ted Horrell of LSS to Commissioner Wright as the Education Liaison of the BOC, which documents the need for the temporary signal and request of 50% funding of the change order on their existing contracts related to Campus Drive.

RESOLUTION R-101-2024

AUTHORIZING PAYMENT TO THE LAKELAND SCHOOL SYSTEM FOR A PORTION OF THE COST OF A TEMPORARY TRAFFIC SIGNAL AT HIGHWAY 70 AND SEED TICK ROAD

WHEREAS, the Superintendent of Lakeland School System ("LSS") has determined that with the opening of Campus Drive at Highway 70 and related traffic safety concerns, a traffic signal at Highway 70 and Seed Tick Road is necessary; and,

WHEREAS, LSS has requested that the City of Lakeland share in the cost of this temporary signal, which was planned as part of existing traffic safety plans; and,

WHEREAS, funding for these expenses will be appropriated in the Fiscal Year 2025 Annual Budget for General Fund (via budget transfers and/or amendments):

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of the City of Lakeland, Tennessee, that the City Manager is hereby authorized to remit a transfer out to Lakeland School System in the amount of thirty-two thousand four hundred dollars ($32,400).

APPROVED AND ADOPTED by the Board of Commissioners of the City of Lakeland, Tennessee, this 18th day of July 2024, the public welfare requiring it.

ATTEST:

Josh Roman	Cheyenne Carter
Mayor	*City Recorder*

Subject: Request
Date: Thursday, July 11, 2024 at 4:23:32 PM Central Daylight Time
From: Ted Horrell <thorrell@lakelandk12.org>
To: Wesley Wright <wwright@lakelandtn.org>
CC: Michael Walker <mwalker@lakelandtn.org>, Laura Harrison <lharrison@lakelandk12.org>
Category: Orange Category

Commissioner Wright,

Per our discussion in your role as BOC Education Liaison, I am writing to request that the City of Lakeland split the cost of a temporary light at the intersection of Seed Tick and US 70. With the imminent completion of the extension of Campus Drive to US 70, I'm concerned about the safety of students and other drivers making the left turn north bound on Seed Tick that would then allow them to turn right onto Campus Drive to enter the Lakeland Prep campus. The absence of this light will likely encourage many drivers to choose to utilize the intersection of Canada and US 70 to enter the Campus which would not cause us to realize the advantage of the new access road, cause congestion, and possibly cause other traffic safety issues.

My proposal is that LSS execute a change order with our current contractor, Moss Carpenter, so that we could get started on this work right away in the hopes that it be completed before or shortly after the first day of school. My request is that the LSS BOC approve the allocation of half of the total cost for the project from the City to the school system. The change order proposal for the temporary light is for a total of $64,800, so our request would be that the City remit $32,400 to the school system for this work.

Please let me know if you have any questions about this request. I will forward you the official change order once I receive it.

Thanks!

Ted

Dr. Ted Horrell

Superintendent

Lakeland School System

Phone: (901) 867-5412

Fax: (901) 867-2063

www.lakelandk12.org

Twitter: @lakelandk12